NOTES ON THE CONSTITUTION OF 1901

SEABURY

The American Church
1607-1909

Colonial Period: Eve of Ascension Day, May 13th, 1607—July 4th, 1776.

1. First Va. Charter, April 10th, 1606—The Restoration of Charles II, May 29th, 1660.
   Va: 1st Rep. Assembly in America, July 30th, 1619. Eccl. Laws by laymen. 1635, Counties and Parishes established.
   1643, Presentation by Vestry; Induction by Governor; Removal by Assembly. 1662, Vestries Self-perpetuating.

2. Second Era of Colonization: The Restoration—The Revolution, Dec. 11th, 1688.
   Carolina, Charters of March 24th, 1662-3 and 1665. Proprietary. (North and South, 1729.) 1670, Charleston; 1682, St. Philips.
   Maryland, (Charter, June 20th, 1632, to the Roman Catholic Lord Baltimore.) 1676, May 25th, the Rev. John Yeo.
   Mass. (Charter, March 1629; annulled 1684.) 1686, the King's Chapel, Boston; the Rev. Robt. Ratcliffe.
   (August, 1664, New Netherlands, i. e., N. Y., N. J., Pa., and Del., conquered from the Dutch.)

3. Era of Church Establishment and Foundation: The Revolution—Death of Queen Anne, Aug. 1st, 1714.
   Establishment: Md. (Royal Province, 1691-1724), by Acts. 1692, '96, '98, and 1702. The Rev. Thomas Bray, D. D., Commissary, 1695; S. P. C. K., Mar. 4th, 8th, 1698-9; the S. P. G., June 16th, 1701. N. Y. (Dutch, 1609-64), by Act 1693; Trinity, N. Y. City, 1697. So. Carolina, by "Church Act," 1706.
   Foundation: Pa. (Charter to Wm. Penn, Quaker, March 4th, 1681.) Christ Church, Phil., 1695. N. J. (Dutch,—1664; Royal Province, 1702. April 17th.) S. Mary's, Burlington, March 25th, 1703. R. I. (Charter, July 8th, 1663.) Newport, 1698; Trinity Church, 1702. Del. (Swedish, 1638-55; Dutch, 1631-1664.) Revatoria by Wm. Penn, 1682, Emmanuel, New Castle, 1704.

4. Era of Growth and Foundation, Georg I., Aug. 1st, 1714—July 4, 1776. N. Hampshire (annexed to Mass., 1641.) Queen's Chapel, Portsmouth, 1732. Con. (1722. "The Conn. Converts" (1634; Charter, 1662.) Georgia (Charter, 1732.) Christ Church, Savannah, 1733.

5. Combination of the Provincial Churches in a National Church. The Name, Prot. Epis., Chestertown, Md., Nov. 9, 1780. The Episcopate, Bishop Seabury, Aberdeen, Scotland, Nov. 14th, 1784. The Constitution, Philadelphia, Sept. 27th, 1785. Provincial Churches united, Oct. 2nd, 1789, Independence Hall. Prayer Book revised, Oct. 5-16, 1789.

6. Growth of the National Church. 1811, May 29th, Consecration of Bishop Hobart and Griswold. 1835-8. Diocese of N. Y. Divided. 1835. Dom. and Foreign Missions Society founded; 1st Missions to China; Bishop Kemper, 1st Miss. Bishop. 1367, 1st Lambeth Conference. 1880-92. Second Revision of the Prayer Book. 1895, House of Bishops attains full prerogative, Minneapolis.

Vestry and Rector: Their Legal Relation Defined. 4 S 1911.

The decision of Supreme Court Justice Marean in the case of the late Rev. Dr. Ackley and the vestry of St. Andrew's, Brooklyn, is of general interest quite apart from its immediate occasion. The issue arose out of a petition to make permanent an injunction granted by Justice Garretson on Sept. 30, 1910, requiring the vestry to permit Dr. Ackley access as rector and co-trustee to the church. In the memorandum accompanying his decision Justice Marean says: "The legal title of the church edifice is in the vestry of the church. They hold it to religious uses—a vague charitable use. None of the vestry has any beneficial interest in it beyond what all those who are permitted to join in the various religious observances therein have. It is simply managed by the vestry for the furtherance of religion in the community. That management is subject absolutely to control and direction by the State. . . . While in electing a rector the vestry may fix his salary, the relation entered into with him is not merely, perhaps not at all, contractual. Above and beyond any contractual relation, he becomes an integral member of the vestry—of the body corporate—and can no more be removed from that office than any other vestryman by a vote of the vestry. His membership, unlike that of other vestrymen, is not for a term of years, but until removed by death or pursuant to the canons (since the statute is silent on that subject). He may probably resign if he wishes, but he cannot be forced out except by the canonical procedure. . . . As the plaintiff is still the rector and still a member of the vestry, and as it is provided by the canons that 'for the purpose of his office the rector shall at all times be entitled to the use of and control of the church and parish buildings,' it follows that his exclusion is wrongful. He is one of the trustees of valuable property, charged with its administration for religious uses, and with peculiar duties which involve his freedom to enter the church edifice and there perform such duties. He has the same right to maintain the action which a bank president has who has been excluded from the bank. I do not agree that he must first seek relief from the ecclesiastical courts, which have no power to enforce their decrees. When it comes to the exclusion of a plaintiff from his certain right, no matter what its origin, to the free use of tangible, valuable property either for himself or for the benefit of others, the civil courts are open to him."

NOTES

ON

THE CONSTITUTION OF 1901

BY

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VESTRY AND RECTOR: THEIR LEGAL RELATION DEFINED

THE decision of Supreme Court Justice Marean in the case of the late Rev. Dr. Ackley and the vestry of St. Andrew's, Brooklyn, is of general interest quite apart from its immediate occasion, says the *Churchman*. The issue arose out of a petition to make permanent an injunction granted by Justice Garretson on September 30, 1910, requiring the vestry to permit Dr. Ackley access as rector and co-trustee to the church. In the memorandum accompanying his decision Justice Marean says:

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RESPECTFULLY DEDICATED

TO THE

MEMBERS OF THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA;

AND TO OTHERS WHO MAY BE INTERESTED IN ITS REPRESENTATIVE SYSTEM.

PREFACE.

The latter part of "An Introduction to the Study of Ecclesiastical Polity," published in 1894, contained an application to the American Ecclesiastical System of the federal principles involved in the foundation of the Apostolic Office; and in the course of the application such comment as appeared to be required was made upon the Constitution which forms the basis of that System.

The amendments to this Constitution which were accomplished in 1901, while they have not, so far as I have been able to observe, impaired the value of the principles upon which my comments proceeded, have yet made so much alteration in the arrangement, and mode of expression of the articles commented on, as to deprive my references of the accuracy essential to correct citation. Explanation being needed to make them intelligible under the present phase of the Constitution, it has been found more convenient to embody that explanation in a distinct treatment of the Instrument itself; and this has given occasion to the further extension of comment which is here presented in the hope that it may be useful.

For convenience of reference, copies of the Constitution of 1898 and 1901, reprinted by permission of the Secretary of the House of Deputies, have been placed at the end of the Essay.

W. J. S.

8 Chelsea Square, New York.
Feast of the Annunciation 1902.

INTRODUCTION.

The action taken in General Convention at its recent session in regard to the Constitution, differed in one important respect from any action taken as to that Instrument since the time of its first authoritative establishment in 1789. The Constitution has at various times been amended in various particulars; but it has now for the first time since its adoption undergone a general revision, and an amendment involving extensive re-arrangement of matter already contained in it, as well as considerable addition of matter entirely new in that relation. The Constitution amended in due accordance with its own provisions, presents itself still as the same Constitution. But, naturally, when amendments are limited to particular points, the attention is especially directed to those points, rather than in general to the Instrument itself, which continues to be taken for granted much as it was before; whereas amendment of so general a character as that before us, seems rather to invite attention to the Instrument as a whole, and to suggest questions as to its nature, origin and history. Without entering, however, upon the formal consideration of the topics thus suggested, it is proposed at present to examine the Constitution as set forth in 1901; to note the changes which were accomplished in the then completed amendment; to discriminate between new matter, and that which is traceable to previous Constitutional provisions; and to discuss incidentally, and so far only as may appear to be necessary, such matters of general Constitutional information and interest as seem naturally to present themselves in the fulfilment of this practical endeavor.

It is much desired to confine the present essay within such limits; and, above all, to refrain from anything that may wear the appearance of being speculative, or in advocacy of merely theoretical and impracticable distinctions. There are, however, certain matters important in their relation to the nature of that action whose

results we are to examine, which cannot justly be disposed of without a somewhat extended discussion; although, perhaps, not more extended than may be suitable to an introduction: and, as these matters seem to lie upon the threshold of our enquiry, we may as well approach them through the medium of the title to the Instrument, the words of which indeed are not without a bearing upon them.

The title is as follows:

"Constitution Adopted in General Convention in Philadelphia, October, 1789, as Amended in Subsequent General Conventions"

The last clause in this title was added in 1901, to the title previously in use. The addition serves the purpose of identifying the present Constitution with that adopted October, 1789. Otherwise the title is the same (with insignificant variations in punctuation probably attributable to the process of editing for publication), through successive editions of the "Digest" with which it is printed, back to the year 1859, when the Digest first appeared, and back of that in the Journals to 1844, inclusive. Between that date and the year named in the present title, whenever the Constitution appears in the Journal, which is not always, it bears the same title as was prefixed to it in that year, 1789.

The use of the word "Constitution" in this title, without an article, definite or indefinite, is noticeable. It gives the title somewhat the appearance of an endorsement on a paper folded for filing. It is a sort of memorandum note, which in part suggests questions, and in part waives the answer to them. No formal declaration is made as to the body of which this Instrument is the Constitution; as to the authority by which it is imposed; or as to the proper objects of that authority. The title "Constitution" appears to assume the existence of information as to such points as these, without undertaking to communicate it. But laconic as it is, it suffices to point out that the Instrument so entitled, being printed with the Journal of General Convention, and prefixed to a code of canons or laws emanating from that body, is, in legal obligation, of a kind distinguishable from those Canons; one being Constitutional and the other legislative; one being a law to law givers, a rule of ac-

tion to be followed by those to whom the legislative and other functions of government are thereby entrusted; the other containing the laws enacted in subordination to that organic law from which the legislators have derived their authority.

Another suggestion, for which we are indebted to this brief title, bears upon the much mooted question as to what that body is, of which this Instrument is the Constitution. Explicit information upon this point, as has been before observed, is not given; and we are left to the consideration of the internal evidence furnished by the Document itself and to such extraneous information as we may haply possess, in order to the determination of it to our own satisfaction.

It has been claimed by some that this Instrument is the Constitution of General Convention; by others it has been claimed to be the Constitution of the Protestant Episcopal Church; and by others, to be the Constitution of the Association of Diocesan units which are integral or elementary parts of that Church; or more briefly, but less precisely, the Constitution of an Ecclesiastical Union corresponding with the Civil Union known as the United States.

The claim that the Constitution is that of General Convention, has certainly the merit of brevity and simplicity; but it is apt to involve also the recognition of an inherent authority in that body, not properly attributable to a representative assembly. In the sense that the Constitution is the organic law under which General Convention has its authoritative being, and only in accordance with the provisions of which it may act, we might say that this is the Constitution of General Convention; but not in the sense that that body is of its own authority the originator of this Constitution; that it has imposed it upon itself, and may by its own power alter, suspend or abrogate it.

It is not indeed essential that a Constitution should be imposed by a body upon itself. We regard the Church, considered as a visible Society of Christ's establishment, as living in the world under a Constitution imposed upon it by Christ Himself, and by the Apostles acting under His authority, and guided by the Holy Spirit: and whatever action in regard to its own concerns this continuously existing Society may at different times, in differ-

ent places, see fit to take, it is always limited to the due observance of the Faith, the Sacraments and the Ministry, which are the essential elements of that Constitution. Action taken by any body being, or claiming to represent, the Church in any time or place, contrary to these fundamental, and in a proper sense Constitutional principles, is no action capable of obligation upon the conscience of its members. And to those who recognize the Church as living thus under a Constitution, which although unwritten is real and capable of determination by proper evidence, it cannot seem necessary that the Constitution of any body should be a Constitution imposed upon itself.

It might therefore be admitted that the Instrument under consideration could be the Constitution of General Convention, in the sense of being the organic law of its existence and action; always reserving to the body which has established the Constitution its due recognition of paramount authority in the premises. That there is such a body, and that it has an existence distinct from and independent on General Convention seems to be necessarily implied in the terms of the title, and accordingly assumed throughout the Instrument itself. The title designates the Constitution as "Adopted in General Convention." Whatever General Convention may be, as to which no information is yet given, it is evident that this written expression of organic law was the act of a body distinct from, and acting in General Convention. And it is to be noted in passing that by the terms of the title it appears that this body is, legally speaking, the same body which acted in General Convention "in Philadelphia, October, 1789." Though time and the personal changes inseparable from time, have intervened between that date and the present, that body which existed in 1789, and then acted in General Convention in the adoption of a Constitution, has since continued to exist, and continued to act in General Convention, and has now in 1901 acted in General Convention; as is manifest from the fact that the Constitution set forth in 1901, is described as adopted in General Convention, October, 1789, and "As amended in subsequent General Conventions."

And lest it should seem that too much importance is here attached to the use of one preposition instead of another, since prepo-

sitions are sometimes interchangeably used, it may be well to point out a reason why the preposition in was properly, and therefore it is presumed designedly used in this title instead of the preposition by. Article 9 of the Constitution which was under amendment in 1901, contained this provision as to its alteration. "This Constitution shall be unalterable, unless in General Convention, by the Church, in a majority of the Dioceses which may have adopted the same." It is plain therefore that the language used in the title is, as far as it goes, simply accurate; and that the action denoted was action taken in General Convention by the body which adopted the Constitution, and by its terms established General Convention, and prescribed a rule of action for it. It is true that what was Article 9 of the Constitution which was under amendment in 1901, no longer, in its altered guise as Article XI., in the amendment of that year, bears, so far as its language is concerned, the same testimony to the propriety of the use, in the still retained title, of the preposition "in." The process of amendment is in some respects changed as will be noted in its proper place; and amendatory action is directed to be, with specified qualifications, by General Convention. But that General Convention is an agent, whose principal acts either in it, or by means of a process directed to be taken by it, is sufficiently plain in both phases of the Article cited. The language of the title therefore, taken in connection with the language of the Constitution with respect to its own amendment, shows that the source of the authority imposing it is a body which by the Constitution has created General Convention and prescribed a rule of action for it.

Now as to what that body is, there are as has been intimated, two theories; one being, to put the matter as briefly as possible, that that body is the Protestant Episcopal Church in the United States; and the other, that it is the association or union of constituent or component parts of that Church. For it is not to be doubted that the advocates of each theory have in mind the same Church; and that the real issue between them is whether the source of the action taken is to be found in that Church as a whole, or in the mutual consent and agreement of integral parts of which it is composed. Of this issue, more hereafter: but meantime it is to be noted that

there is an indication of evidence in favor of the former branch of the alternative, contained in the title of the Constitution as adopted, October, 1789.

The title then prefixed to the Instrument was, "The Constitution of the Protestant Episcopal Church in the United States of America." It is to be remembered, however, that although it is proper to consider the bearing of the title upon the subject under discussion, yet the facts shown by the language of the Instrument itself must be admitted in explanation of the language of the title. The title must at any rate be understood in such a way as to make it consistent with the facts evidenced by the Instrument. And although the title at this time describes the Instrument as the Constitution of the Protestant Episcopal Church, yet the question is still open as to the sense in which these words are there used: whether with reference to the whole of that Church in the United States which was commonly understood to be denoted by the terms Protestant Episcopal, or with reference to such component parts of the Church so denoted as were under that Instrument associated in a common work. The fact disclosed by Article 5 is that the Church so denoted was recognized as existing in States not then represented, and having not yet acceded to the Constitution. That Instrument must therefore be understood to be the Constitution of the Protestant Episcopal Church in such States only as were then represented and acceding. In other words, the Protestant Episcopal Church of which this Instrument was said to be the Constitution, was the Protestant Episcopal Church associating and acting in certain of its component parts over which the authority of the Constitution extended, and not the Church as a whole, which included other integral parts over which the Constitution had as yet no authority. The fact disclosed in Article 1, is that this Church in a majority of the States adopting the Constitution shall be represented in order to a quorum of General Convention, the Church in each of such States being by Article 2, entitled to representation. By Article 8, the Book of Common Prayer is ordered to be used in the Protestant Episcopal Church in those States which shall have adopted the Constitution, no authority being asserted over the Protestant Episcopal Church in the States where it had

not been adopted. And by Article 9, provision is made for the alteration of the Constitution by the Church in a majority of the States which may have adopted it. The facts thus disclosed in the body of the Instrument certainly are not consistent with the idea that the title uses the term Protestant Episcopal Church as descriptive of that Church as a whole; and the title of 1789 must therefore be understood as denoting that Church as it existed in such of its component parts as were then associating under its Constitution. It is equally obvious that "the Church" referred to in the note at the foot of the Instrument, giving the date of its adoption, (whatever may be the evidential value of that note) is the same Church as that denoted in the body of the Instrument; that is to say, the Protestant Episcopal Church in such of its component parts as were then associating: and the phrase "General Convention of the Bishops, Clergy and Laity of the Church," can mean no more, and no other, than General Convention of the Bishops, Clergy and Laity representing the component parts in which that Church was associated.

The difference between action taken by the Church as a whole, and action taken by mutual consent of integral parts of which it is composed, may seem to those who are uninformed as to the system of the Church to be inappreciable: but it is real, and not without important consequences in its application. The Church as a whole is composed of its ministry and people; and the Church as a whole in any particular region, is composed of its ministry and people in that region. Using the word Church in the only sense in which it is here applicable, as meaning an Episcopal Church, or one living under the regimen of Bishops, the Church as a whole in any country is composed of its Bishops, Clergy, and Laity in that country. But the Church as a whole in any country is upon analysis resolvable into certain integral parts of which it is composed. And these integral parts are not respectively, the Bishops, Clergy, and Laity of the Church; for this would be no analysis, but a mere division into sections, each of which would be devoid of life without the others, and neither of which therefore could be properly an integral part; since such part must be the simplest form of the same kind with the whole; the single element which, in combina-

tion with other like elements, constitutes the larger and more complex being of the same kind. This elementary or integral part of the Church is the Diocese; for in that only exists the whole Church in model or element, possessing the threefold order of the ministry essential to the Episcopal idea of a Church, united with the Laity in the Faith and Sacraments of Christ. The single Congregation is not, on Episcopal principles, such integral part since it is not of the same kind; not having, as such Congregation, the combination of the threefold order of the Clergy with the Laity which is characteristic of the whole. The Province, or association or group of Dioceses, is not such integral part, because it is not the simplest form of the kind under analysis.

The issue then, with this explanation, is whether the action taken in General Convention in respect to the Constitution is action of the Church as a whole by its Bishops, Clergy, and Laity operating *en masse,* or action taken by the several Dioceses of which it is composed, and in which it exists. That in the time of the original adoption, the unit or integral part was the Church in each State; that such unit was in effect a Diocese, either actually possessed of a Bishop, or in process of procuring what it ultimately possessed in this particular; and that the Dioceses now hold the same relation to the system which was then held by the Churches in the States, are historical details which need only to be mentioned, and do not call, in this place at least, for elaboration.

But since it is impracticable that the Church as a whole should act by all the Bishops, all the Clergy, and all the Laity of which it is composed, and yet the consent of all to action of the whole, is to be assumed in order to its validity; it is manifest that such consent can only be given, and such action only taken, representatively, that is by representatives, or agents, or deputies duly authorized to express the required consent of the whole. And since it is equally impracticable that all the integral parts of which the Church is composed should as one body act all together at one time, and yet the concurrence of all is to be assumed as essential to the validity of their common action, it is equally manifest that such concurrence must be reached, and such action taken, representatively, that is by representatives, or agents, or deputies duly authorized to ex-

press the joint will of all: such expression being, as in all cases of deliberative and representative association, given by the major part of the assembly in accordance with its previously established rules, and the consent of such prescribed majority standing, by the agreement of all, for the act and concurrence of the whole. It follows therefore, that the real question at issue, however it may be phrased, is as to the nature of the representation which characterizes the ecclesiastical system of which the Constitution is the basis, and General Convention the exponent; and when it is enquired whether that body which acts in General Convention imposing a Constitution upon itself, is the Church, or the Association of Dioceses which are its integral parts; what is really needed is an answer to the question, what is the constituency in General Convention? This statement of the issue goes far to the settlement of it; and seems to explain allusions in the Constitution to that body which, acting in General Convention, has established it.

For since the Constitution makes distinct provision for the representation in General Convention of the Church in the Diocese; and makes provision for the representation of the Clerical Order, and the Lay Order, not at all as they are parts of the Church as a whole, but only as they are parts of the Church in the Diocese, it is manifest, so far certainly as concerns one House of General Convention, that the Church in the Diocese is the constituency of each representation; and therefore that the body represented and acting in General Convention, is the association of all the constituencies so represented. And although the Constitution does not specifically provide for the representation of the Church in the Diocese by its Bishop in the other House of General Convention; nor, of course, for his special election to a representative position in that House at any session of General Convention; yet that is apparently because he has been elected once for all to that function among others when chosen by the Diocese to be its Bishop; and holds that position as Bishop of that Diocese, and not as a Bishop at large: so that the Church in that Diocese is in fact and necessarily represented in that House by that Bishop. That it is by the amended Constitution now provided that other Bishops are to be members of that House beside those who are Bishops of the Dioceses represented as such

in General Convention, may have an important bearing upon the equality of the representation of those Dioceses in that House, and upon the balance of the two Houses in their joint deliberative action, as will be considered in the proper place; but it has no bearing upon the fact that the Diocese is represented as such in both Houses, since no mere addition to a system complete without it, can fairly be regarded as other than an exception allowed for special reasons. Such provision proves indeed that the Constitution permits a Diocese to have a double vote in the House of Bishops under the temporary and exceptional circumstances of its Bishop having a Coadjutor, or resigning his jurisdiction, which involves his having a successor in the Diocese and an associate in the House: and further that certain other Bishops, who have what is called Missionary jurisdiction, are members of the Episcopal House of General Convention as well as Diocesan Bishops; although the Clergy and Laity over whom they preside, not being yet organized into Dioceses, have no constitutional representation in the other House of that body. The wisdom or unwisdom of these permissions is not here under consideration. The point is that they cover exceptional cases, all more or less temporary, and some clearly external to, and dependent upon, the system, and not essentially a part of it: and therefore do not hinder the conclusion that the thing represented under the Constitution is the Church in the Dioceses, and that the Constitution is the Constitution of the Association of those Dioceses.

If this view is correct, it need not be pointed out that the view which regards the Church as such as imposing upon itself a Constitution is incorrect. But it may be worth while to point out that this consequence obviates certain inconveniences which have been felt by some who have regarded the Church in this country as the imposer upon itself of a Constitution. By these it has been objected that the Church, having already a Constitution imposed upon it by its Divine Founder, has no need of any other, and indeed can have no other in any proper sense of the word; but can only put forth in the way of canonical legislation such rules as may be needed for the carrying into effect of its original Constitution. Hence it has been argued that that which claims to be a Constitution is not really such, but only in effect a Canon; and that even

if the title were not a misnomer, yet the thing itself is an impertinence, or at best a makeshift attributable to the exigencies of the time of its origin; and, if possibly justifiable under those exigencies, certainly not fit to be continued a moment longer than those exigencies may require.

Of course such arguments, in assuming the Constitution to be equally with Canons subject to the power of General Convention, quite ignore the intrinsic political impropriety (to use no stronger term) of leaving to the same body the power to legislate, and the power to set aside the rule and limit of its own legislation, thus making it practically arbitrary and irresponsible. But apart from this consideration, it may be admitted that the arguments rest upon a truth. For viewing the Church as a Spiritual Society of Divine establishment, and as being in any place the visible representative of the Catholic Church of Christ's foundation, there is not the slightest need that it should make a Constitution for itself, and moreover it is in fact beyond its power so to do. Laws it may make for its own members: but these must be in application of, and in conformity with, the Constitution already imposed upon it. And as certain extremists have characterized the Constitution of the United States as a magnificent device for the prevention of the people from governing themselves, so the Ecclesiastical Constitution is perhaps naturally regarded, from the point of view described, as *some kind* of a device to prevent the Church from exercising those powers which are involved in the Charter of its own being.

But when we come to consider the case of an association between integral parts of the Church for the establishment of a common bond of union between them, and the recognition of certain fundamental principles of administration of their common concerns, the inconveniences just indicated do not appear. The Church existing in all such parts still applies to its own needs the principles of its original Constitution as a Spiritual Society; and each integral part, subject to its responsibility to the author of that Constitution, is independent on all others in such application. And if neighborhood and other providential circumstances, make it desirable that several of such parts should associate themselves

together for the better fulfilment of their common work, there is no reason why such association should not take place, and no reason why the principles on which it is to operate should not be embodied in a written Instrument, which is properly called a Constitution, as being the organic law of such Association.

Nor is there any reason why the word Church should not be applied, as it is in this Constitution, to denote the authority by which it is established: even though that authority be understood to be not strictly speaking, the Spiritual Society of Christ's foundation, but the association of integral parts of that Society for the better fulfilment of their common duty in the discharge of that portion of its work which has been allotted to them. But inasmuch as the word Church is used in different senses, it is expedient to discriminate by qualifying terms: and hence the authority which speaks in the Constitution describes itself ordinarily as "this Church," meaning apparently this association which is now acting in the establishment of its own organic law; and on three occasions as "the Church," a phrase which appears to be used as equivalent to "this Church," and to avoid repetition. The phrases "A Protestant Episcopal Church," and "the Protestant Episcopal Church" are also each used once.

Circumstances, it may be observed, have often required that in the use of the word Church, the qualifying terms necessary to a due discrimination, should be composed not only of articles and demonstrative pronouns, but sometimes also of other parts of speech. The Church being ONE in purpose and principle, and originally in fact also, needs, abstractly speaking no qualifying terms of description. It is simply the Church. But in its extension, and especially in its divisions, it comes under certain conditions and circumstances; and from these conditions and circumstances qualifying terms have arisen. At first different parts of the Church were distinguished simply by the places which they respectively occupied; as the Church in or of certain cities, Jerusalem, Antioch, Alexandria, Rome—as the case might be; and later with respect to regions of a more extended and national character, by the names of such regions or countries, or the people inhabiting them. And since in process of time differences have arisen, resulting in schisms, it is conceivable that a body which claimed to be the historic and

authorized exponent of the one original Church in any place or country, might feel called upon to use such qualifying terms as would particularly designate its own position in respect to certain conspicuous departures from original truth. More especially is this conceivable in respect to a Church situated in a country, the civil conditions of which precluded the possibility of identifying it simply by associating it with the name of that country. This is the conception which we find realized in the case of the Church in this country upon the recognition of the Independence of the States after the Revolution. Before the Revolution the Church was naturally known as the Church of England in the Colonies. But after the Revolution, although the same Church, it could not be called, with any propriety, the Church of England in the respective States, nor in the Federal Union of those States; nor, with any approach to precision, merely the Church in or of such political entities. And so, *somehow,* but apparently by gradual usage rather than by formal act of authority, that Church which had been the Church of England in the Colonies, came to be distinguished by the qualifying terms Protestant and Episcopal, which were adjectives commonly supposed at that time to express certain qualities eminently possessed by the Church of England, as well as by itself in its relations to other ecclesiastical bodies in this country; and, as adjectives, these terms have equal qualifying force with other adjectives, such as Catholic, English or Roman.

Whether these terms were at first applied with wisdom, or with due regard to euphony, and the convenience or sensibilities of succeeding generations is, fortunately, not under consideration here. The point is that they are terms of description used for identifying the body to which they are applied, and that they are equally sufficient for identification whether they be applied to the Church as it existed before the adoption of the Ecclesiastical Constitution, or after such adoption: and when the Constitution uses the phrase "Protestant Episcopal Church," it appears from the connection in which the words occur, to have in view the body so identified, or characteristics of it which the context indicates.

The conclusions to which the foregoing discussion points are, *first,* that the Instrument under consideration is in the proper

sense a Constitution; that is to say not the result of the exercise of legislative power, but the organic law which a body of competent jurisdiction has imposed upon itself and its constituted agents, for the regulation of legislative and other functions incident to the administration of government in it; and *secondly*, that the body so acting in the imposition of this Constitution is the association of such integral parts of the Church within the civil jurisdiction of the United States, as are represented in that association, and have signified their union with it by acceding to its Constitution: and these conclusions are respectfully submitted as stating principles proper to be applied to the construction of this Instrument; and as explanatory of its provisions upon a consistent theory demonstrably conformable to the facts of its establishment.

That the Constitution and the powers conferred by it, have always been construed by the consistent application of this theory, or for that matter of any other theory, is a different proposition. Under any aspect of it and its obligation, a Constitution of human imposition is always the result of the agreement of men of different minds—a combination of variant, if not opposing, interests and ideas; and is therefore always and necessarily the result to some extent of compromise, whereby a certain basis of common action is attained among those who have different ideas as to the nature of the authority under which they act, or which they seek to impose, and as to the means proper to the exercise of that authority. It is probably for this reason that a Constitution is so generally regarded as an important conservator of liberty, since it furnishes a mode of living between men of different conceptions as to their own rights and the rights of others, and secures each one from the tyranny of overbearing application to him of the ideas and opinions of others; seeking to preserve this freedom by the settlement of certain just limits which, however men may think and feel, they must observe for the common good. But although the basis of common action continues to be recognized, yet the variance of thought also continues; and naturally manifests itself in corresponding constructions of that basis, or in efforts to modify it in accordance with such constructions. And so it comes to pass as this variance works sometimes in

one direction, and sometimes in another, the prevailing views of a Constitution and of the system for which it stands, fluctuate, and are found sometimes on one side of an issue and sometimes on the other, and the Instrument itself often comes to bear traces of the influence of one view or the other.

So it has fared with this Ecclesiastical Constitution; the current setting at different times more or less strongly in the direction of one or other opposing conceptions of the nature of the system for which the Constitution stands. On one side is the idea that the system is to be honestly regarded and fearlessly carried out as a real representative system based on the federal consent of its Diocesan constituencies, wherein the Bishops, Clergy, and Laity comprising the Church are to speak and act (so far as the system is concerned) in consequence of and by virtue of their connection with those Diocesan constituencies. On the other side is the idea that the form of representation, in which the Bishops have no part, is merely assumed for convenience in the selection of certain Clergymen and Laymen who, untrammeled by the expressed will of any constituency may, with the concurrence of the Bishops, impose such laws as they conceive best for the Church; and whose connection with the Dioceses is a sort of legal fiction, without real significance, involving no responsibility, and needing nothing so much as reform—unless it be removal.

It need not surprise us, therefore, if we find in our examination of the Constitution, that neither it, nor the legislative action of General Convention, is entirely without trace of the influence of these different conceptions of the nature of the system.

ARTICLE I.

GENERAL CONVENTION: PRESIDING BISHOP.

The Constitution as amended in 1901, consists of eleven articles designated by Roman numbers. Previously, the Constitution consisted of ten articles numbered in the Arabic character. This is noted to avoid confusion in references; as an article of the present Constitution, the second for example, would be cited as Article II., while a reference to Article 2, would indicate the second article of the previous Constitution.

Article I., of the Constitution as it now is, consists of six sections; provisions of which not new are taken from Articles 1, 2 and 3, of the old Constitution.

The provisions of Article I., relate (1) to General Convention; and (2) to the office of Presiding Bishop of the Church.

(1) As to General Convention, the article (a) establishes it, and defines its composition; (b) prescribes the nature and mode of its action; and (c) indicates the conditions under which it is to act.

(a). The present Article I., provides that there shall be a General Convention; (Art. 1) and that it shall be composed of the House of Bishops (Art. 3), and of the House of Deputies (Art. 2), consisting of not more than four Presbyters canonically resident, and four laymen communicants having domicile within each Diocese in which the Church is entitled to representation; (Art 2), such clerical and lay deputies being chosen in the manner prescribed by the Convention of the Diocese which they represent (Art. 2).

What is new in this connection is the extension by Section 2 of the membership of the House of Bishops; and the provision by Section 4, for the reduction by Canon of the representation in the House of Deputies. These changes are both of great importance and deserve serious attention. It will perhaps be more convenient to consider first the addition made in Section 4, and afterwards the new matter presented in Section 2.

Section 4 of Article I., contains the following provision: "but the General Convention by Canon may reduce the representation to not fewer than two Deputies in each order."

The motive of this amendment is plain. It recognizes the fact that the representation of each Diocese by four clergymen and four laymen, involves, as the number of Dioceses is increased by division, a corresponding increase in the membership of the House which would in time make it too unwieldy for effective operation: and it applies a remedy sufficient to meet the practical difficulty, temporarily at least, when it shall have become necessary to meet it, without further amendment of the Constitution. The General Convention may by Canon reduce the representation of each Diocese from eight to four, when that action is considered desirable. The principle of the representation of course remains unchanged. The constituency is the same, and the two fold representation of that constituency remains unimpaired.

Whether it would not have been well to take the opportunity afforded by so complete a remodelling of the Constitution as has taken place, to remodel also the plan of Diocesan representation without departing from the principle that the Diocese is the ultimate unit of representation: and by what mode it is possible to effect such action, are questions as to which men may differ, and which may perhaps be regarded as speculative. But although the necessity for determining them does not for the present exist, yet it is by no means improbable that they may by and bye press for an answer in some practical way. The problem of preserving the common and equal representation of all constituent parts, without an indefinite and unmanageable increase of the representative body, is one which it would seem neccessary to solve, and solve constitutionally, if the constitutional system is to survive. Perhaps the time is not yet ripe for the decision of the serious questions involved. At any rate it is plain that the present amendment has contributed nothing to that end, but by a temporary arrangement has postponed the problem instead of solving it. The subject therefore must continue to engage the attention of the thoughtful; and it is worth while to observe that in connection with the establishment of Provinces within the National system, for which the

foundation is laid in the amended Constitution, one of the most important and indeed fundamental questions in the whole subject suggests itself; the question, namely, whether it is essential to the preservation of the principle of the equal representation of co-ordinate constituent parts, that such representation in the common government should be direct and immediate; or whether it may not be indirect and mediate, without impairing its equality and effectiveness, and without loss of substantial right of self-government in the constituent parts as to all matters not affecting the common interest. To state the question less abstractly, it is whether the Dioceses may not be represented directly and immediately in the Provincial Council, by whatever name called; and mediately in General Convention, if that name be retained, by representation from the Provincial Assembly. Or, still more concretely, by way of example, whether all the Dioceses in a State might not compose a Province, and be directly represented in a body common to all the Dioceses in that State; while representatives from that body would be sent to General Convention retaining constitutional powers of the same kind as at present. The ultimate unit in such representative system would remain, as of necessity, the Diocese. Its representatives would unite with others in the choice of representatives of the Provincial group, who would thus represent all the constituent parts of the group in the common government with others of like capacity from the other groups: whereby the general representative body would be kept within reasonable dimensions, and its attention confined to matters of really common interest. Whether such result be approached by the mode given in this illustration which would be but a return to the original system of representation of the Church in the States with adaptation to the changed circumstances of later times, and would thus be strong in the force of traditional, historical, political and legal associations; or by some other mode conceived to be free from the objections attaching to that, though probably not without others peculiarly its own; the question which has suggested itself would require first to be decided before the mode could be determined. If, however, the question is ever decided in favour of the indirect and mediate representation which has been described, it will involve the previous

abandonment of certain prejudices which would seem in recent years to have gained so much in strength as to have become in a manner axiomatic, though when examined in the light of the principles of representative government they appear to be anything but self evident. One of these is that the more representatives a constituency has, the better it is represented. Another is that representatives ought not to be instructed by their constituencies, and ought not to be bound by instructions if received; but that they are endowed somehow and from somewhere, with the right to take these constituencies under their protection, and do what they think is good for them. And another is, that there is something about the office of a Bishop, or about his person as affected by his office, which precludes the possibility of his possessing any manner of capacity for representing or being represented: which last reflection is a reminder that we leave the region of speculative questions, and return to the enquiry as to facts presented by the amended Constitution; and consider in particular, the new matter introduced by Section 2 of Article I.

The first sentence of that section, which is all that we are at present concerned with, reads as follows:

"Every Bishop of this Church having jurisdiction, every Bishop Coadjutor, and every Bishop who by reason of advanced age and bodily infirmity arising therefrom has resigned his jurisdiction shall have a seat and a vote in the House of Bishops."*

Under the provisions of the former Article 2 (cf. the first and last sentences), "the Church in each Diocese," having adopted the Constitution, was entitled to a certain clerical and lay representation; and by Article 3, "The Bishops of this Church," that is the Bishops of the Church represented as immediately before specified, "when there shall be three or more, shall, whenever General Conventions are held, form a separate House," which is designated throughout the Instrument as the House of Bishops. The House of Bishops then, under that form of the Constitution, was com-

* An amendment has been proposed, to be acted on in 1904, changing the third clause of the above sentence so as to read, "Every Bishop who by reason of advanced age or bodily infirmity has resigned his jurisdiction." (Journal of 1901, p. 571.)

posed of the Bishops of the Dioceses which had acceded to, or adopted the Constitution, and of no others. There were indeed no others when the Constitution was adopted, nor for years afterwards. Even when occasion arose for Coadjutor or Assistant Bishops, they were still Bishops belonging to Dioceses (or States, with which Dioceses were then coterminous) which had acceded to the Constitution, being thus constituent members of the Association which had established the Constitution: and their case seems to have come at least within the letter of the Constitution; in so far as that Article 4, speaks of "the Bishop or Bishops in every Diocese," implying that there might be special circumstances which would make it expedient that there should be more than one Bishop in a Diocese, but providing explicitly that in any case he should be chosen by the Convention of the Diocese or according to its will.

Soon, however, this Church which, under common government, existed only in association of its component parts under the Constitution to which they had respectively acceded, began to reckon with itself in regard to its responsibility for its members, or those who were of its Communion, or of the Communion of no Christian body, who dwelt or sojourned beyond the limits of those States wherein these component parts were located; and in recognition of a responsibility which as a body it possessed, it proceeded to make provision for them that, in this sense, were without. It did this in several ways: first, by tendering to those who were in States not represented, the privilege of being represented with them in the Common Union; next, by missions into outlying districts of this country, and later also, into foreign countries; and, in much later times, by provision for its own members sojourning in foreign lands, but not received to the Communion of the Churches therein existing. In the first of these cases, no care was undertaken, and no authority was asserted; only the earnest desire for the extension of the Ecclesiastical Union was expressed.* The last of these cases need not here be particularly considered, because the Episcopal oversight of foreign chapels is thus far devolved upon one of the home Bishops, and the See of the Sojourners beyond Seas has not yet been

* Cf. terms of appointment of Committee to address the Church in certain districts. 1808. Bioren's Journals, p. 252.

established with a Bishop of its own to have a seat and a vote in the House of Bishops. In the other case, that is the case of missions, care was undertaken, and authority exercised and admitted: and those who were in these missions under the teaching and in the Communion of the Church were in the position which churchmen in the colonies had occupied with reference to the Church of England. Whatever of organization and association they might have among themselves, they looked, for all necessary connection with the Episcopate, to the Episcopate of the Church organized under the Constitution. They were not component parts of that organization, but members of the same Communion in outlying or foreign regions, dependent for the means of grace upon the Ministry and Sacraments provided by that organization. In other words, instead of being component parts of the organization, they were dependencies upon it. And for many years, the whole of the work in such regions, domestic or foreign, was carried on only by Presbyters, who had their orders and mission from the Episcopate which was a part of the organization. In due time it was determined to carry on this work by Bishops sent out to lead, oversee and guide it. But the work did not therefore cease to be the mission work of the Church as associated under the Constitution, nor to be a dependency upon it as distinguished from a component part of it. A roving commission to supply the things that were wanting, and strengthen that which was ready to die, throughout the immense field of the entire Northwest; another to the vast region of the Southwest; then the settlement within the, comparatively speaking, smaller limits of distinct Territories belonging to the Civil Union; then the adoption of a similar plan with reference to missions in various foreign countries; all these were evidences of the joint care of the Church as an organized body for those who were dependent upon it.

The whole mission in any place was established and cared for by that body, and the Bishop who conducted it was not chosen by the people over whom he presided but was appointed and sent to those people by the common authority of that body, exercised by General Convention; and the work was chiefly if not wholly supported by the Missionary Society chartered by Canon of General Convention. All of this provision was eminently wise; and so long

as it should continue to be recognized as made for the benefit of dependencies upon the common authority from which it proceeded, nothing but good could come of it: good to the outlying and foreign regions wherein the Gospel was freely preached, and their inhabitants guided in the way of right faith and right living; good to the Church associated, not only by reason of the benefit to itself in the strengthening of missionary zeal and enterprise, but also because the seed was being sown which should grow by degrees into Churches which in the time to come would be part and parcel of the Association—which would thus be more widely extended, and infinitely strengthened in its own orderly way.

That this distinction has not been consistently adhered to is matter of profound regret. That it has not been entirely lost sight of, is evident from the fact that the Missionary Districts, either domestic or foreign, have never been regarded as entitled to representation in the House of Deputies. When they have been organized into Dioceses, and have as such acceded to the Constitution, they have of course, under it, become members of the Union; and have thenceforth been entitled to representation as Dioceses. But as Missionary Districts they have not been represented in the constitutional sense of that word; although they have been permitted to send delegates who were allowed to speak in reference to their mission, but not to vote as Deputies. The consistent adherence to the idea of the distinction between the constituent parts of the organized body, and fields of missionary work dependent upon that body, would have required that the same principle be adopted in regard to membership in the House of Bishops, as had been consistently acted on in the House of Deputies. The Presbyters who wrought so manfully in their missions, and faithful laymen who wrought with them, were not thought of as having rights of membership in the House of Clerical and Lay Deputies; and neither should the Bishops of those missions, by parity of reason, be thought of as members of the House of Bishops. They might well and justly have been received in the House of Bishops to speak for their own missions, but not to vote as members of the House upon questions pertaining not to their missions, but to the regulation of that body upon which their missions were dependencies. But this con-

sideration, conceived upon no abstract imagination, and certainly—it seems unnecessary to say, but it is a pleasure to say it—upon no idea of the personal unfitness of these Bishops to be members of that House, but upon the mere principle of common justice, has apparently not been allowed its due weight in the administration of the system. In the Canon by which General Convention has provided for the election of domestic and foreign missionary Bishops by the House of Deputies upon the nomination of the House of Bishops, it is declared that each of such Bishops shall be entitled to a seat in the House of Bishops. (Digest, Title I., Canon 19, Sec. vi, [8]. Sec. vii, [2].) The expression is not quite conclusive as to the question whether the right to a seat involves the right to a vote; and as the House of Bishops sits with closed doors, one who is not a member of that House may be excused for not knowing what, as a matter of fact, the practice has been in the exercise of the right conferred by Canon; and thus for some uncertainty as to what this provision of the Canon meant. If it meant only what it said, then the same principle may be understood to have been applied in the House of Bishops as has always been applied in the House of Deputies, and the Missionary Bishop has been in the House without the right to vote; although with such privileges as the rules of the House might confer either as matter of courtesy, or from a natural desire for information as to his mission. If the phrase meant more than it expressly said, and purported to confer upon such Bishop the right to vote; then the least that can be said is, that it went beyond the constitutional power of General Convention, which undertook to confer a right which it had not to give. For, whatever may be said as to the *general* nature of powers conferred by the Constitution, no created body ever yet had the right to transcend the law of its own organism imposed by the will of its Creator: and to unsettle the balance of the functions brought into operation by that organic law, is more than to transcend—it is to contradict it.

But whatever ambiguity may possibly be detected in the canonical phrase, none seems to be discoverable in the language in which the amended Constitution provides for the composition of the House of Bishops.

"Every Bishop of this Church having jurisdiction," is a phrase which plainly includes all the Bishops of this Church, except those who have resigned or have been deprived of jurisdiction. Except, indeed, for abundance of caution, there would seem to have been no reason for the solitary specification of the Bishop Coadjutor, since he certainly is not without jurisdiction. Jurisdiction is, properly speaking, the right to exercise the power of order; though popularly the word is used to denote the place where that right is exercised; and though the Coadjutor has generally no territory of his own (though sometimes by particular assignment he may have that too), yet it is by Canon made a condition precedent to his election that the Bishop of the Diocese shall state the duties which he thereby assigns to him in view of his election and consecration (Title I. Canon 19, Sec. v); so that he certainly receives with his consecration the right to exercise his power of order—which is jurisdiction. But in his case by particular specification, and in all other cases where jurisdiction is possessed, that is to say in the case of Diocesan Bishops, and in the case of Missionary Bishops, domestic or foreign, all Bishops of this Church are entitled by the terms of the amendment contained in Section 2, of Article I., to sit and vote in the House of Bishops. Where Bishops are without jurisdiction, which may be either by deprivation or resignation, they do not come within this provision, except in the case of resignation on the specified ground of infirmity, in which case the seat and vote are retained. Missionary Bishops therefore, being consecrated as Bishops of this Church, and having their Episcopal field lawfully designated through election by the House of Deputies on nomination of the House of Bishops specifically for that field, are clearly authorized by the amended Constitution to sit and vote in the House of Bishops.

Thus in the course of our comparative study we encounter the fact that an addition of membership is provided for the House of Bishops by the Constitution, which without that authorization would have been contrary to the Constitution, or at least not authorized by it. In other words, this provision contains entirely new matter; and introduces an element into the administration of the common government, which was not, constitutionally speaking, previously present.

We are not then concerned with the lawfulness of the provision; for of course the authority by which the Constitution was imposed had the right to alter it; and the alteration having been duly made is to be accepted. But we are concerned with the meaning of the alteration, and with the effect of it: and these points, it is presumed, we are permitted to question and discuss, with due respect to the authority to which we are bound to defer. The meaning of the provision, so far as its terms go, is plain enough; but the significance of it, or what the alteration was intended to effect, is not so plain but that men may differ about it. The one thing, however, which ought to be considered quite clear about it, is that it cannot be accepted as an alteration of the basis of the constitutional system, so as to change the character of its constituency. It is, indeed, conceivable that the Church as associated under the Constitution, might in due accordance with its provisions for its own amendment so alter it that that constituency might be entirely abolished; and the confession might be made, for instance, that the Church so associated had learned by experience the futility of the attempt to carry out the principles of constitutional order in the working of Church affairs, and therefore threw itself entirely upon the inherent rights of the Episcopate, content to accept the law for all its actions from that body: but it is inconceivable that any change thus revolutionary, either in this or any other direction, would be brought about by a mere side ruling on one feature of the constitutional system, leaving the rest of the provisions establishing that system untouched in any way. It must therefore be understood that this amendment has no bearing upon the character of the constituency of the Union, which remains what it was before.

But the effect of the alteration upon the administration of the system founded on that basis may nevertheless be most important. And inasmuch as this amendment touches the exercise of the power of determining the expression of the will of the common government, it is legitimate to enquire what effect this new provision has upon that expression.

Without approaching at all the question as to the representative character of the Bishops in the House, and for the moment accepting the assumption that they sit without regard to their con-

nection with the work to which they are specifically chosen or appointed, and as Bishops at large, or, if the expression be preferred, as Bishops in the Church of God, it must be admitted that the system regards the House of Bishops and the House of Deputies as co-ordinate members of the common legislature: and that this implies their equality with one another in the power to determine questions before that legislature. Whatever, then, impairs the balance of that equality, tends to weaken its salutary influence; possibly even (and possibilities are the proper objects of constitutional foresight) to destroy it: for if one of two co-ordinate members is enlarged out of proportion to the other, its required majority becomes greater, and therefore more difficult to secure in the way of concurrence.

Suppose now, taking small figures for easier illustration, that we have twenty Dioceses represented in the House of Deputies, and twenty Bishops sitting as Bishops at large, or in the Church of God, in the Episcopal House, and that eleven of the Dioceses carry a measure in the House of Deputies. There will then be required in order to make the measure the act of the Convention, a majority of eleven Bishops of the Church of God in the other House. But suppose again that there had been six more Bishops of the Church of God added to that House on account of their connection with missions. That would make the eleven Dioceses in the House of Deputies need a concurring majority of fourteen Bishops of the Church of God, instead of eleven as before. The difference between eleven and fourteen is not very large to be sure; but it is the difference between concurrence and non-concurrence: and that difference is always important, and might under some circumstances be very vital indeed. The fact is, a departure from principle is always serious; and to introduce into a complicated system an element which is characteristic of another system, is what no man can foresee the end of. If the Bishops wish to sit in Council, and take such spiritual and pastoral action as they conceive the Church to need, there is nothing to hinder them in that; and nothing, either, to hinder their admitting to their Council any number of Bishops, domestic or foreign, missionary or titular, and giving to each the

same right to vote which belongs to all the others, since in such Council they are all peers, by virtue of their holding the same office, with the same powers, for the same purposes. But the House of Bishops, as known to, and established by, the American Ecclesiastical Constitution, is not a Council in the proper sense of that word, but a co-ordinate member of the General Convention, recognized and instituted with powers of government purposely adjusted on terms of equality with the House of Deputies: and to provide for its composition, not on that basis, but on the basis of the connection of its members with another and exterior system, is to strike a note which is out of harmony with the principles on which the Constitution is founded.

It is possible that this inconsistency, even if recognized, may be thought of little moment. The tendency of the times is to care little for principles, and less for modes, so long as business can be done smoothly, and without friction of any kind. And to the lovers of lubrication, nothing is so tiresome as the theories and proprieties of system-makers, or those who have a remnant of conscience for the due observance of systems already made. To all such obnoxious persons, the lubricators, if they still retained a faith in Purgatory, would begrudge the slightest share in the benefit of Indulgences. But even at the peril of the total forfeiture of Indulgences or indulgence, it ought to be said here, that this matter of the unsettlement of the balance between the two Houses is one that touches the very foundation of our American Ecclesiastical System. It does so because the principle on which the disturbing influence is introduced, ignores the elementary distinction between the pastoral and spiritual supremacy of the Bishops, and the concern which they have in the government of the Church as a Society. The visible Church of Christ's foundation is none the less a Society, because it is a Spiritual Society; and as a Society it has concerns and interests which are not purely spiritual, but partake more or less of the character of those of Civil Societies. And admitting that no earthly or civil power can confer, limit, or take away the spiritual authority of the Successors of the Apostles, it still remains true that their authority over the concerns and interests of the Church which are not purely spiritual, is not exclu-

sive, nor is it to be exercised apart from the consent of those who are with them members of the same body. Nor, probably, excepting of course the Papal System, which has absorbed the temporal as well as the spiritual authority into its claim of Universal Supremacy, has there ever been an Episcopal System in which the jurisdiction of the Bishops, in so far as it is separable from the administration of the power of order, has not been modified in its exercise by the will of the body of the Church, or by Christian Princes acting as the self-constituted exponent of that will. More than this, it seems not extravagant to say that if the body of the Church had always had its due influence in its own government as to matters not purely spiritual, there would not have been the superfluity of unepiscopal societies, which now perplexes the observer of the Christian world. Be this, however, as it may, it is certainly true that the body of the Church in this country found itself after the Revolution in a position of advantage almost undreamt of since the time of Constantine, in which it had opportunity to claim its just right, without impairing its dependence for the means of grace upon the Episcopate; and undoubtedly it availed itself of this opportunity. The discipline of nearly two centuries, whereby Providence had seen fit to deny it Bishops of its own, fitted it to take steps towards its own organization without them; and thus to secure its just rights without denying—though, indeed, it was at first a little careful about admitting—those of the Episcopal order; and the attitude of the civil government, which refused on any plea whatever to have anything to do with the regulation of the internal affairs of religious societies, enabled the body of the Church to take back into its possession the rights which Christian Princes had hitherto assumed to hold in trust for its benefit. And the system under which these rights were to be administered had, as its very bottom foundation, the principle of equality in the administration of common affairs; equality of Bishops, Clergy and Laity; and equality of Dioceses, as the integral parts of the Church to which these orders belonged. So that if any one thing more than another is likely to hinder the ends sought for in the establishment of our system, it is the introduction into its administration of the idea that one House is capable of a prepon-

derating influence over the other; especially if that idea carries with it the conception that the Bishops are not part of a common system of government, but an order separate and apart from it.

For such reasons as may be inferred from what has now been said, it would seem that the balance which has been impaired ought to be restored. In what way this can be done is a matter which must be referred to the statesmanship of those who are called to the councils of the Church. But inasmuch as power once acquired is seldom set aside, and inasmuch also as it would be extremely invidious, even if it were possible, to remove the additions which the Constitution has now authorized to the House of Bishops, it is apparent that the remedy must be sought in some other way. And as amendments to Constitutions grow out of recognized existing needs, it is possible that the way may be opened to the restoration of the balance by an addition to the constituencies of the House of Deputies. The distinction between Dioceses and Missionary Districts under Episcopal oversight (although historically easy to be accounted for), is in itself perhaps technical rather than substantial. The dependent character of the missions has been brought about by their inability to make provision for themselves; and during this dependence, which in any case is temporary, and preparatory, the appointment of their Bishops by General Convention naturally takes the place of their election by those whom they are to oversee. With that exception they are in effect Dioceses, having the same characteristic of the three-fold order of the Ministry united in the Faith and Sacraments of Christ. And perhaps the time will come when, with due care and circumspection the principles of federation can be so applied to them as to make them, equally with the Dioceses now so called, component parts of the Constitutional Association; by recognizing their organization, when it shall have attained a permanent character, as Diocesan organization, and admitting them to accede to the Constitution, and to representation accordingly. One of the indications of the turning of the mind of the Church in this direction may be seen in an amendment proposed at the Convention of 1901, and to be acted on in 1904, which has for its object the gift, to the Missionary Districts within the United States, of the Constitutional

right to a representation. The proposed amendment is to insert in Article I. a section reading as follows:

"One Clerical and one Lay Deputy chosen by each Missionary District of the Church within the boundaries of the United States shall have seats in the House of Deputies, subject to all the qualifications and with all the rights of Deputies except the right to vote when the vote shall be taken by orders." (Journal of 1901, pp. 571, 572.)

So far as the Church within the boundaries of the United States is concerned, if the extent of those boundaries is ever settled, that amendment would answer the whole purpose here contended for, if a period were put after the word Deputies in the next to the last line, and the following words, constituting the exception, were stricken out. Whether this change would involve other changes in the Constitution, and what those changes ought to be, is matter for serious consideration, which this part of the present essay has been already too much protracted to permit here. But it seems, at least, to be an important move in the right direction.

After having thus established and defined the composition of General Convention, Article I. goes on to indicate (b) the nature and mode of its action, and (c) the conditions under which that action is to be taken.

(b) The nature of its action is legislative. "Either House may originate and propose legislation." Sec. 1. The provision of the old Constitution was that an act approved by both Houses should "have the operation of a law." (Art. 3.) Both provisions mean, and were manifestly intended to mean, the same thing; and taken in connection with the fact that all the powers conferred upon General Convention by the several Articles of the Constitution (except the last two, which contemplate a different kind of action), are of a legislative character, they show that General Convention is a legislative body. It has always, moreover, been regarded not only as a Legislature in the System, but as the Supreme Legislature therein. This inference was inevitable from provisions in-

corporated in Article 2, from the beginning, declaring that the Church in each Diocese adopting the Constitution shall be bound by the duly consummated acts of General Convention, whether such Diocese has been actually present by its Deputies in that body or not. No such provision, however, appears in the amended Constitution. It is here presumed to have been taken for granted that, as this supremacy in legislation had been established from the beginning of the System, and had always been and still was acquiesced in by all the Dioceses, it was not necessary to continue the stipulation. But the omission is unfortunate, and is not to be commended as a good precedent in Constitution building: although it may be taken as evidence of the absence of intent to change some features of the system which have been not so plainly indicated in the amended as in the previous form of the Constitution.

Passing from the nature to the mode of action prescribed for General Convention, it may be briefly said to be that of joint, or concurrent action of its two separate Houses, as under the former Articles 2 and 3. Action of either House, without the concurrence of the other, is not action of General Convention. As to the mode in which action of either House is taken and expressed, no rule is here imposed upon the House of Bishops, though elsewhere in certain cases a majority of the House is required. Otherwise this House is at liberty to follow its own mode, but is presumed to follow the usual practice of deliberative bodies, acting, in the absence of other rule, by the numerical majority of the members present.

In respect to the action of the House of Deputies, however, the mode is explicitly prescribed, and is substantially the same as heretofore (Art. 2), although with different form of expression. The third paragraph of Sec. 4, Art. I., provides that on any question, the vote of a majority of the Deputies present shall suffice, unless otherwise ordered by this Constitution, or by Canons requiring more than a majority, or unless the Clerical or Lay representation from any Diocese requires that the vote be taken by orders. This in the main describes the previous practice, understood to be not incompatible with the vote provided for in Art. 2. The peculiarity of the vote provided for on the requirement of any delegation does not preclude the House from the usual parliamen-

tary liberty, when that vote is not called for, or not otherwise lawfully enjoined. And this peculiarity—which is the distinguishing characteristic of the whole system—is carefully marked in the Constitution both before and after the amendment.

It was doubtless designed to be, possibly it is, more plainly expressed in the present, than in the former version; but neither version can be understood to require other than the same kind of vote, which is the vote not of a majority of the Clerical representatives concurring with a majority of the Lay representatives, but the vote of a majority of all the Dioceses represented and voting by Clergy, concurring with a vote of a majority of all the Dioceses represented and voting by Laity. In other words each Diocese has two votes; a vote by its Clerical representatives and a vote by its Lay representatives; and of all the Dioceses represented in either order, there must be a concurrence of the majority of Diocesan votes in one order, with the majority of Diocesan votes in the other order. The will of the Diocese in its Clerical vote is expressed by the numerical majority of its Clerical representatives. Three out of the possible four determine the vote in that delegation; two out of an actual three determine it; it is, of course, determined by the agreement of all, if all agree; if one only is present, his single vote is the vote of the Diocese in that order. If a Diocese is not represented in that order it does not vote; and if its representatives in that order are evenly divided, the Diocese casts no vote in that order. And the rule is the same in the case of the Dioceses represented by Laity, as in the case of the Dioceses represented by Clergy. But if the Diocese votes one way by its Clergy, and another way by its Laity, these votes do not cancel or offset each other. Each is counted in the number of votes necessary to make a majority in each order. The Diocese having two votes may cast the Clergy vote in one way and the Lay vote in another, and both count.

This characteristic vote has been popularly called at different times the vote by Dioceses, the vote by orders, and the vote by Dioceses and orders. In no phase of the Constitution is it formally named, although it is referred to in the present one as the "vote by orders." It is now provided that in all cases of this "vote by

orders," the two shall vote separately, "each Diocese having one vote in the Clerical order, and one in the Lay order; and the concurrence of the votes of the two orders, by not less than a majority in each order of all the Dioceses represented in that order at the time of the vote, shall be necessary to constitute a vote of the House."

The Constitution before this amendment provided that in all questions when required by either representation from any Diocese, "each order shall have one vote; and the majority of suffrages by Dioceses shall be conclusive in each order, provided such majority comprehend a majority of the Dioceses represented in that Order. The concurrence of both orders shall be necessary to constitute a vote of the House of Deputies." The same phraseology goes all the way back to 1789, unchanged except in the particular that upon the division of the Church in the State of New York into two dioceses in 1838, the word Diocese is substituted for the word State, as in other parts of the Constitution. The phraseology is no doubt that of the venerable Bishop White, from whom the whole scheme of representation appears to have been derived. Comparing that of 1789 with that of 1901 the only notable difference as to the description of the vote is that in the latter year it is called a "vote by orders," whereas in 1789 the majority is described as a "majority of suffrages by States." Probably the form of expression in 1789 is accounted for by the fact that in the Draft Constitutions of 1785 and 1786 (which were not authoritatively adopted, but prepared the way for that which was), the provision was that there should be a representation of both Clergy and Laity in each State, and that "in all questions the said Church in each State shall have one vote (1785, 'but one vote' 1786), and a majority of suffrages shall be conclusive." It was natural then that when the plan of voting by orders had been grafted on to the plan of voting by States, which first appears in 1789, the form of expression should be that "the majority of suffrages by States shall be conclusive in each order," and that the right to vote by orders should be more firmly secured by adding "*provided* such majority comprehend a majority of the States represented in that order." Beyond this variation in expression, however, there is

absolutely no difference in the manner and effect of the vote described. It is the same vote whether it be called a vote by orders, or by Dioceses. It is a vote by orders, as those orders are representatives of Dioceses; it is a vote by Dioceses, as those Dioceses are represented by orders. It is in fact what it used to be commonly called a vote by Dioceses and orders.

One thing, however, it is important to note in this connection, and that is that although it is necessary for the adoption of a measure to have a majority of all Dioceses represented by Clergy, concur with a majority of all Dioceses represented by Laity, it does not follow that this is the same as the vote of a majority of the Dioceses. This is perfectly obvious in the language used, but the distinction is sometimes overlooked. To have the vote of the majority of the Dioceses represented, it would be necessary that a majority of the Dioceses represented should each cast both its votes on the same side, so that each of this majority of Dioceses represented would vote both by its Clergy and Laity on that side. It is possible that this may be done, although it is nowhere in the present Constitution required; but it is equally possible that it may not be done; and in fact the probabilities are against it. And even if it should be done, it could not be effective without the concurrence of the other House; and a majority of that House acting, would not necessarily consist of the Bishops of that majority of Dioceses which had voted solidly in favor of a measure in the House of Deputies. So that apprehension of a sectional majority of Dioceses controlling a minority of Dioceses in another section; or, indeed, of a majority of Dioceses drawn together by any other influence than that of sectional association, over a minority of Dioceses not affected by that influence, is no reasonable ground of objection to the system. On the contrary, the diffusive and popular character of the representation provided by this System is as remarkable a feature of it as is its Diocesan constituency; and is quite as likely to be felt in its practical operation. And notwithstanding the claim which is frequently, not to say periodically, put forward for a representation more proportionate to the number of people and less reflective of the will of the Dioceses as such, one may be pardoned for doubting whether any scheme could be

devised which would be better calculated to bring out the sentiment of the whole body of the Church, composed as it is of Bishops, Clergy, and Laity, than the one provided in the Constitution. Each of these orders, so to speak, has a voice in determining the action of that common government which has been established by the Dioceses which have adopted the Constitution; and, contrary to the will of either of these orders, that common government cannot act. In the nature of the vote which we have been considering, the will of the Clergy and Laity is expressed by a representation equal in each Diocese, and equal in all the Dioceses each to the other; and if the vote were required to be that of a majority of the Dioceses, this might present the difficulty of a measure adopted by a majority of constituencies containing a smaller number of persons in all, than would be contained in a minority composed of more populous constituencies. Possibly it might present other difficulties. But whatever the difficulties might be under this requirement, it is manifest that they do not exist when no such requirement is made. If one should desire to obliterate the inherent distinction existing between Bishops, Clergy and Laity, and the equally inherent distinction between the Diocesan constituencies of the System, thus transforming the representative body into a sort of exaggerated town meeting in which every question is to be decided by the numerical majority of individuals, it might be imagined that the present system would not answer the purpose. But if one seeks the justice of a really common consent, in which no right of either of the parts in which the community essentially exists is ignored, but in which each has its effective share, it seems impossible to imagine that this end can be better attained than by the means provided by the System under consideration.

(c) But we are now to inquire as to the conditions under which action is to be taken by General Convention under the Constitution. And here, of course, it is to be said that any power conferred upon that body in the Constitution is to be exercised under such conditions as may in the particular instance be imposed. What is here to be considered is the question as to conditions which apply

necessarily to any action of the body, and except in conformity to which the body cannot rightly act at all. Several conditions of this kind exist, and they are fittingly set forth in Article I., whereby the body is established, and its composition, and nature and mode of action defined. They may be thus stated:

First. That the two Houses shall sit separately; from which it follows that action taken in a joint session of the two Houses, if such a thing took place, would not be action of General Convention, but simply action of the company of individuals who were members of that body, without Constitutional force or effect. That the members of these two Houses may individually sit together, as they do in their capacity of members of the Domestic and Foreign Missionary Society chartered by Canon of General Convention is, of course, true. But action taken in such session, or in any joint session, is not action of General Convention. This condition is now formally expressed in the Constitution for the first time, although it was involved in Article 3, of the former Constitution, retained since its adoption in October, 1789, which provided that "the Bishops of this Church, when there shall be three or more, shall, whenever General Conventions are held form a separate House." As General Convention had been organized in August, 1789, by the Church in several States, in two only of which there were Bishops, and as there was then only one House existing, all that was necessary was to provide that when there should be three or more, the Bishops should form a separate House, which would, as a matter of course, sit separately; and since in October, 1789, the Constitution was adopted by the Church in other States not before represented, in one of which there was a Bishop, the Bishops, thus being altogether three in number, did then actually constitute a separate House, and have ever since continued to sit separately as such House. Now, however, when in the amendment of the Constitution, the formation of the Constitution is projected as it were afresh, to make the Constitutional requirements correspond to existing facts, the provision is that General Convention shall consist "of the House of Bishops and the House of Deputies, which Houses shall sit and deliberate separately."

There is added to this: *Second.* The condition that "in all

deliberations freedom of debate shall be allowed." This condition is derived from the provision at the end of Article 1, of the Constitution amended, and was there retained from Article 1, of 1789, being found also in the same form in the previous drafts of 1785 and 1786, the form being as follows: "And in all business of the Convention freedom of debate shall be allowed." As the provision was at first adopted it referred to the Clerical and Lay Deputies who then composed General Convention, the Bishops being not yet established as a House of that Convention. Presumably it was understood to apply to that House when it became part of the Convention; but (whether to put this hereafter beyond question, or merely with a view to the selection of a place convenient for the insertion of the clause), the Constitution as amended makes the provision in terms applicable equally to the House of Bishops and the House of Deputies, "which Houses shall sit and deliberate separately; and in all deliberations freedom of debate shall be allowed." Article I., Section 1.

The expression seems to speak for itself, and hardly to need comment; but feelings and fashions vary among men from time to time, and it is as well to have this principle thus set in the fore front of the Constitution and to have a clear understanding of its meaning and importance. It is a guaranty of the right of every member of the Convention to be free to debate every measure which is the subject of its deliberations. Had the purpose been to guard the rights of the community in general the phrase freedom of speech would have been better; but the design being to guard the rights of members of a deliberative body, freedom of debate is the appropriate phrase. Freedom of debate is freedom of speech as to all that a member of such a body has the right to speak of; and that is only what is properly before the body for consideration. Every assembly of men which is not a mob must proceed with order, and there is among civilized people a certain traditional usage which is called Parliamentary Law, according to the easily understood rules of which, by common consent, discussion is to be conducted; and in addition to this, every such assembly may adopt its own rules by the consent of its members; and no one has the right, while he continues a member of the body, to transgress its rules. But within these limitations freedom of debate is absolute.

Every member of the body has the right to speak his mind as to all measures proposed; and he is not to be hindered by unreasonable rules extemporized for the purpose of stifling discussion, nor by harsh and arbitrary decisions of a presiding officer; nor, one is tempted to add, by any of that supercilious disapproval which a chairman is sometimes skilled to express without words; nor by that simulated and one-eared attention which but thinly veils the contemptuous prejudgment either of the chair or of the assembly.

Third. It may, perhaps, be open to question whether the provision of Section 1 of Article I., that "either House may originate and propose legislation, and all acts of the Convention shall be adopted and authenticated by both Houses," prescribes a mode, or a condition of action. The point is hardly of importance except as a matter of arrangement, and for convenience the provision is here considered as prescribing a condition upon which only the Convention can act. Nothing is an act of the Convention which is not originated and proposed in one House and adopted by the other, and authenticated by both Houses. It is an unqualified assertion of the absolute equality of the two Houses in the action of the Convention; and while objections to the American Ecclesiastical System as departing from the Catholic tradition in devolving legislative power upon Presbyters and Laymen, are not to be discussed here, it may be proper to point out in passing that on the Constitutional basis of the equality of the two Houses, no power at all can be exercised by the Clergy and Laity contrary to the will of the Bishops. So that if by Catholic tradition Bishops are to be trusted to take the lead, with due consent of the governed, in the regulation of the Church, and to have an absolute and effectual negative upon all regulation not initiated by them; then the American Ecclesiastical System is not a departure from Catholic tradition in this respect; and if this is not Catholic tradition, then the American Ecclesiastical System has set an excellent example, conformable to Apostolic precedents.

It must be confessed, however, that in the establishment of this constitutional basis of equality, and the recognition of the just rights of the Episcopate involved therein, the development of the system has been somewhat slow, and the consent of inferior orders

and laity has been given rather grudgingly and of necessity, than with that alacrity which characterizes the cheerful giver.

In that tentative association of the Churches in the Middle and Southern States of the Union which preceded the authorized action of 1789, the plan of the organization was formulated by degrees as a system in which Bishops were contemplated as possible but not essential. These preliminary steps were taken between 1784 and 1786, and in those years there was no Bishop settled in any of the Churches in States associating. In the draft Constitutions of 1785 and 1786, Bishops when consecrated and settled, and acceding to the Constitution to be adopted, were to be recognized as members of the Convention *ex officio;* a Bishop when one should be present being (1786) allowed to preside. And while no objection was made to the right of the Churches in the States to procure Bishops to be consecrated for them; and, on the contrary, joint measures were taken in furtherance of that object, yet apparently this was rather with a view to the effect of their spiritual ministrations, than with any clear conception of the position which they were to occupy in the projected representative system. Without resident Bishops in the country for nearly two centuries, and *not* without very strong sentiments of aversion in many quarters to them considered as rulers, it is not remarkable that the founders of the system should have proceeded in the first place to organize it so that it would work without them; and should afterwards have been extremely cautious lest their inclusion should in any way disturb its mechanism.

In short, from a religious standpoint, being members of an Episcopal Church, the founders were not prepared to deny that Bishops might be a desirable acquisition; but as founders of a system of polity, they really did not yet quite know what they should do with them. But they honestly lived up to the exigencies successively presented to them; and when the time came that the bridge must be crossed, they were content to pass over it, but still with some cautious apprehension of what they might find on the other side.

In 1784, Bishop Seabury had been consecrated for Connecticut; but neither Connecticut nor the other New England States were associated with the process of organization in the Middle and

Southern States. In 1787, Bishop White was consecrated for Pennsylvania, and Bishop Provoost for New York; both of which States were concerned in the organization of the Ecclesiastical Union. So that in the session of *August,* 1789, there were in the country two Bishops of the Churches in the Union. Article 3, of the Constitution adopted at that session, provided that the Bishops when there should be three or more of them, should whenever General Conventions were held, form a House of Revision, to which Acts passed in General Convention should be submitted for concurrence. If these acts were sent back without concurrence, they were to be again considered in the Convention, and if adhered to by a majority of three-fifths of that body, were to become laws notwithstanding the non-concurrence of the House of Revision. All acts were to be authenticated by both Houses; and an act became a law unless the House of Bishops disapproved, giving its reasons in writing, within two days. And until there should be three or more Bishops connected with the system, a Bishop attending was to be *ex officio* a member of General Convention, voting with the Clerical and Lay Deputies of his State; and a Bishop in that case was to preside.

After the adoption of the Constitution in that session, the Convention adjourned to another session to which had been invited, and at which were present, representatives from Connecticut and other Eastern States not hitherto represented. At this second session, certain amendments being agreed to, the Constitution was adopted by all the Churches represented, being the Constitution referred to in the title as adopted, "October, 1789."

The only amendment of importance—which, however, appears to have been a condition precedent to the accession of the Eastern States—was the substitution of a new Article 3, which put the House of Bishops on another footing, giving to it the "right to originate and propose acts, for the concurrence of the House of Deputies composed of Clergy and Laity," and providing that an act of the House of Deputies should be transmitted to the House of Bishops who should have a negative thereupon, unless it were adhered to by *four*-fifths of the other House; the other provisions of the Article remaining the same, except that the Bishops were allowed three days, instead of two, in which to act upon measures transmitted to

them. Thus the House of Bishops was in a manner put on trial in the system, until in the first part of the 19th century, Article 3 was amended by the withdrawal of the power of the House of Deputies to overrule the negative of the House of Bishops; although the Bishops in case of their non-concurrence were still obliged to act upon a measure proposed to them within three days, and to give their reasons for disapproval in writing. This amendment practically made the House of Bishops equal to the other House; because, although a condition was imposed upon the action of the Bishops, it was a condition entirely within their own power to fulfil, if they were pleased to fulfil it. There was still, however, in the very fact of a condition imposed upon their action, some trace of the apprehension originally entertained in regard to them: and this trace waited to be removed until the first year of the 20th century, in which Article 3, with its historical reflections and suggestions, was superseded by the incorporation of the substance of its provisions into the Section 1, of Article I., now before us; whereby the absolute equality of the two Houses is plainly asserted, and the adoption and authentication of both Houses on the same terms is made the necessary condition of the action of General Convention.

Fourth. It is also an essential condition of the valid action of any regularly constituted body that a quorum, designated by the rules of the body, be present. The provisions of the amended Constitution on this subject are in part new. So far as the House of Deputies is concerned, the new matter consists in the requirement of the presence of a representation by each order in each of a majority of the Dioceses entitled to representation; whereas the previous requirement was only that the Church in a majority of the Dioceses which should have acceded to the Constitution should be represented before business could be undertaken. (Art. 1.) The new provision is precisely as follows: "To constitute a quorum for the transaction of business, the Clerical order shall be represented by at least one Deputy in each of a majority of Dioceses extitled to representation, and the Lay order shall likewise be represented by at least one Deputy in each of a majority of the Dioceses entitled to representation." (Sec. 4, Art. I.)

Previous to this amendment there was never any provision in the Constitution designating the quorum of the House of Bishops;

and this silence has furnished occasion for some discussion and difference of opinion as to what the lawful quorum in that House was; whether the ordinary quorum of a majority of its members, or a quorum otherwise determined. Dr. Francis Vinton (Manual Commentary, pp. 125-128), argues to the effect that three being the number necessary under the Constitution to bring the House of Bishops into existence, the necessary quorum would be a majority of that number; and that the presence of two Bishops only was sufficient to enable the House to act. In 1808, the attendance on the House of Bishops, in fact, consisted only of Bishop White and Bishop Claggett, and it had been anticipated that the latter would be prevented by indisposition from being present; and with reference to this anticipation, Bishop White records ("Memoirs," p. 192. Ed. 1836), that he was prepared to maintain that a single Bishop may constitute a House. On the other hand, the suggestion seems sensible, that since the Constitution prescribed no necessary quorum for the action of the House of Bishops, that House was left at liberty to determine a quorum for itself by its own rules. The question, however, no longer exists; as the Constitution now designates the majority of the body as its necessary quorum, excepting from that requirement Foreign Missionary Bishops, and Bishops who have resigned their jurisdictions; since a quorum would be more difficult to obtain if the required majority included those who, either on account of distance, or infirmity, would be unlikely to be regularly in attendance.

In connection with the matter of the quorum, it is to be noted that in either House any number less than a quorum may adjourn from day to day. This permission is of importance in view of the fact that without it, if the prescribed majorities failed to attend at the appointed time and place, three years would elapse before another session could be held, unless the process of calling a special meeting were undertaken; to avoid which difficulties power is given, when there is no quorum, to keep the regular session alive until the quorum shall have assembled. The new provision is somewhat altered from a former provision, suited to the same purpose, that "the representation from two Dioceses shall be sufficient to adjourn." (Art. 1.) To the new matter, however, the condition is added that "neither House, without the consent of the other,

shall adjourn for more than three days, or to any place other than that in which the Convention shall be sitting." (Sec. 5, Art. I.)

This quotation brings us to:

Fifth, the conditions imposed as to the time and place of meeting of General Convention, as to which it is provided that "General Convention shall meet in every third year on the first Wednesday in October, unless a different day be appointed by the preceding Convention, and at the place designated by such Convention; but if there shall appear to the Presiding Bishop of the Church sufficient cause for changing the place so appointed, he may appoint another place for such meeting. Special meetings may be provided for by Canon." (Sec. 6, Art. I.) These requirements are substantially, although somewhat less compactly, contained in the former Article 1; and the present Canonical provisions in reference to special meetings of General Convention, are to be found in Title III., Canon 1, Sec. i, of the Digest of Canons.

The provisions of Article I., relate, as before stated, (1) to General Convention; and (2) to the office of Presiding Bishop of the Church, which latter subject is now to be considered.

(2) Section 3, of Article I., is as follows:

"The Senior Bishop of this Church in the order of consecration, having jurisdiction within the United States, shall be the Presiding Bishop of the Church. He shall discharge such duties as may be prescribed by the Constitution and the Canons of the General Convention. But if the Presiding Bishop shall resign his office as such, or if he shall resign his Episcopal jurisdiction, or if by reason of infirmity he shall become disabled, the Bishop next in seniority by consecration having jurisdiction within the United States, shall thereupon become the Presiding Bishop."

This provision is entirely new in the Constitution, which heretofore has neither created the office of Presiding Bishop, nor defined the conditions of its tenure, nor prescribed its duties.

It is true that the concluding part of the former Article 3, contained the provision, retained since 1789 (though really without reason, since it applied to a state of things removed by that very Article at the time of its adoption), that until the should here

"three or more Bishops as aforesaid," a Bishop attending a General Convention should be *ex officio* a member of it, voting with the Clerical Deputies of his Diocese, and that in such case a Bishop should preside. This, however, was a provision for the Chairmanship of General Convention while it should continue to exist in the one House of Clerical and Lay Deputies; and had no application to the system as by that same Article made to include two Houses; nor was there any other allusion than this in the Constitution of 1789 to the function of presidency in connection with any Bishop, nor any use of the term Presiding Bishop. In subsequent amendments to the Constitution, however, the term is twice used in connection with certain things to be done; and in the Canons, there is frequent mention of the same kind; the reference being in all cases, as to a Bishop known in the Church under that title. The inference then would be, that such an office, having come into existence without Constitutional or Canonical authority, had been authoritatively recognized as existing, and had been utilized for the purposes of the system: and such is the fact, the term Presiding Bishop having originated in the House of Bishops itself.

Associations of Bishops, like all other deliberative bodies, need a presiding officer; and not only has such a custom prevailed in Episcopal Synods and Councils, but also the office has been apt to carry with it, not superiority of official authority, since all Bishops are essentially of equal official authority, but a certain capacity of representing the common consent of the body, deferred to by its individual members. One of the most ancient known Canons (the 34th of those called Apostolic), provided that the Bishops of every Nation should know him who was chief among them, and should recognize him as their head by doing nothing of great moment without his consent; and that he who was chief should do nothing without the consent of all, that there might be unity of heart. With such precedents before them, of which they cannot be presumed to have been ignorant, it is not surprising that the first House of Bishops should have taken care to make corresponding provision in their own case; and although there were but three Bishops in the country, and but two of this number present in the House, the principle of the presidency of the House as the attribute of the Bishop of senior consecration was established; and the

Bishop of Pennsylvania (consecrated in 1787) recognized, with the grace of a characteristic courtesy, the Bishop of Connecticut (consecrated in 1784) as Presiding Bishop, on that principle. The principle was not adhered to: for in the next session, there being present the Bishop of New York (consecrated in 1787), and the Bishop of Virginia (consecrated in 1790), it was resolved that the presidency go by rotation beginning from the North: whereby the Bishop of New York presided. But some few years afterward (the Bishop of Connecticut having meanwhile deceased) the principle of seniority of consecration was again recognized, by virtue of which the Bishop of Pennsylvania was Presiding Bishop until his death in 1836. The same principle has been since observed, and is now embodied in the Constitution, which, as amended, provides that the senior Bishop in the order of consecration, having jurisdiction within the United States, shall be the Presiding Bishop, not of the House of Bishops alone but of the Church.

The characteristics of seniority, and of the possession of jurisdiction within the United States, which excludes a foreign but not a domestic Missionary Bishop, are the qualifiations for the office; and it continues to be held by the incumbent during his life, unless he shall resign it, or resign his jurisdiction, or by reason of infirmity become disabled: in which case the Bishop next in seniority by consecration, having jurisdiction within the United States succeeds him. Thus this office of Presiding Bishop of the Church, and the terms of its tenure, are established by the Constitution; and the duties attached to the office, without being enumerated, are declared to be such as may be prescribed by the Constitution, and by the Canons of General Convention.

It is proper to note in conclusion that the principle of seniority is again called in question, and an amendment to the Constitution is already before the Church providing for the election of the Presiding Bishop, for the specified term of three years; the election to be in the way of nomination by the House of Bishops, and confirmation by the House of Deputies.

The amendment as proposed at the session of 1901, and to be acted on in 1904, will be found in full on page 571 of the Journal of 1901.

ARTICLE II.

BISHOPS.

The provisions of Article II., are in part reproductive of those of Article 4, of the former Constitution; and in part an expansion of them by incorporation into the Constitution of the substance of Canonical provisions previously enacted by General Convention. There is also included in this Article the constitutional requirement of a practice in regard to Episcopal consecrations which has been generally observed, the custom having found expression in Canons most ancient in the undivided Church.

Section 1 of this Article is as follows: "In every Diocese the Bishop or the Bishop Coadjutor shall be chosen agreeably to rules prescribed by the Convention of that Diocese. Missionary Bishops shall be chosen in accordance with the Canons of General Convention."

Here, it will be observed, three classes of Bishops are recognized by the Constitution; Bishops of Dioceses and their Coadjutor Bishops, who are both to be chosen agreeably to rules prescribed by the Conventions of their respective Dioceses; and Missionary Bishops whose choice is to be provided for by Canons of the General Convention. In other words there is no departure in the amendment from the established principles, that the right to determine the choice of Diocesan Bishops is reserved to the respective Diocesan Conventions; and that the choice of Bishops to preside over those who are as yet without Diocesan organization, is to be made in accordance with the Canons of General Convention; which thus exercises the common care of all the Dioceses over the mission fields for which they are in common responsible. The first part of this amendment is reproduced with some change of phraseology from the former Article 4. The latter part, however, is an expansion derived from previous practice; Canons as to the election of Missionary Bishops being already in existence. (Digest, Title I., Canon 19, Sections vi, viii.) All that the Constitution formerly contained on this subject, was the provision that "The Bishop or

Bishops in every Diocese shall be chosen agreeably to such rules as shall be fixed by the Convention of that Diocese." (Art. 4.) The same provision, the word State being used instead of Diocese, is found in Article 4, of 1789, and in Article VI., of the preceding drafts of 1785 and 1786, showing the continuance from the beginning of the same idea, that whatever Bishops there might be in the State or Diocese, their choice should be according to the rules of that State or Diocese.

The language of this sentence is so plain, and its meaning so obvious, that it is difficult to account satisfactorily for certain Canonical provisions, whereby General Convention, without assuming to take away the right reserved under the Constitution to the Dioceses, has yet ventured to impose such conditions upon the exercise of it, as to restrict and impair its effectiveness; if not, as indeed in some instances has happened, to render it entirely inoperative, and force the Diocese to abandon the choice made, and resort to a second choice less obnoxious to the conditions imposed. It is, no doubt, true that in a matter like that of the choice of a Bishop for one member of a federated system of Dioceses, the others are, or may be, very seriously affected by the choice made; for "whether one member suffer, all the members suffer with it." But it is also true that under a Constitutional system rights are given or reserved, and that conditions imposed upon the exercise of such rights otherwise than by the Constitution itself, are in derogation and denial of those rights; and that the right of choice agreeably to such rules as shall be fixed by the Convention of the Diocese entirely precludes the right of any other body to prescribe conditions upon the operation and fulfilment of such rules. The right to fix rules, involves all the right there is to make exceptions to those rules; and if the welfare of all the Dioceses requires that the liberty of any should be limited, the Constitution is the place, and the only place, in which such limitation should be imposed.

It is, therefore, with peculiar propriety that the present amendment to the Constitution has not only re-affirmed the existing right of the Diocese to the choice of its own Bishop, but also expressed with that statement the conditions under which that right is to be exercised, and under which all the Bishops, Missionary as well as Diocesan, are to be consecrated; thereby providing all the

needed safeguards to the common welfare, in the settlement of individual Bishops. Section 2, of Article II., contains the following provisions on this subject:

"No one shall be ordained and consecrated Bishop until he shall be thirty years of age; nor without the consent of a majority of the Standing Committees of all the Dioceses, and the consent of the majority of the Bishops of this Church exercising jurisdiction within the United States. But if the election shall have taken place within three months next before the meeting of the General Convention, the consent of the House of Deputies shall be required in place of that of a majority of the Standing Committees."

Section 2, from which this quotation is made, concludes with another limitation upon the consecration of a Bishop elect, although this limitation affects not so much the Diocese concerned in the election, as the Bishops from whom the Elect is to derive his Episcopal authority. The concluding sentence of this section is as follows:

"No one shall be ordained and consecrated Bishop by fewer than three Bishops."

The fact that every member of the Apostolic body (and by consequence every member of the Episcopal body, upon which, on the principles of Apostolic Succession, is devolved the ordinary official authority of the Apostolate), has received the gift of the same powers for the same purposes, involves the possession, on the part of each member of the body, of the whole power of the office, and also the obligation on the part of the individual to act in the discharge of the duties of the office in accord with those who hold the same powers equally with himself. And since the perpetuation of the office is by the will of the founder bound up with the terms in which the commission is conferred, every incumbent of that office has the power to transmit and perpetuate it. But in the exercise of this power, as in the case of all other powers of the office, he is under obligation to act in accord with those who hold equal powers. This duty of accord, however, which is the correlative of the power, is of the nature of a moral obligation. It is not in such sense a limitation of the individual power, as that the failure to observe it necessarily invalidates the exercise of the power. The distinction involved is the distinction between power and right; and while the

power is the essential attribute of the office, the right is dependent on the moral obligation attaching to the exercise of the power; which is not incapable of being modified or qualified by circumstances; as, for instance, the impossibility of attaining the formal expression of the accord pre-supposed. The foundation of the obligation is the importance of the preservation of the unity of the Church; and the avoidance, in order to that end, of all factious and schismatical action. And with this view the Canons of the undivided Church, and the general practice of the Bishops of the Church, have been solicitous to guard against mere individual action in advancement to the Episcopal Order, by requiring the co-operation and concurrence of several Bishops.

The first Canon of the code called Apostolical, generally assigned to the second or third century, says "Let a Bishop be ordained by three, or at the least by two Bishops." And to the same effect, as checking individual action by requiring common consent, are the fourth and the sixth of Nicea that a Bishop is to be appointed by all the Bishops in his Province, and that no one is to be made a Bishop without the consent of the Metropolitan; and the nineteenth of Antioch, that a Bishop shall not be ordained without a Synod and the presence of the Metropolitan of the Province.*

Such seems to have been the general practice of the Church; and although in later times there have not been wanting instances in which by Papal authority consecrations were performed by single Bishops, associated sometimes with others not of the Episcopal Order, yet this was consonant to the scholastic theory which regarded the Episcopate as an hierarchical extension of the order of Priesthood, and as acquiring by consecration no increase of the power of order but only an added power of jurisdiction the source of which was to be found in the Papacy; so that the authority of the Pope in the gift of that power of jurisdiction was upon that theory the only essential to a consecration, and might be expressed by one of his Episcopal deputies as well as by several.

The Church of England, however, returning in this respect as in others to the practice of more primitive principles, has always required the co-operation of several Bishops in the act of conferring

* Fulton's Index Canonum, 2nd Ed., pp. 81, 123, 125, 243.

the Episcopal Order; and even "the Catholic remainder of the Ancient Church of Scotland" from which has been drawn one of the strands of the cord which binds the American Episcopate in legitimate succession to the Apostolic body, was never so poor in Bishops, or in Catholic spirit, as to fail in the due observance of this Catholic rule, as historical evidence abundantly proves; so that the American Episcopate, received under this sanction, has but followed the example of its predecessors in the practice of the same rule, which is now most fittingly incorporated into the fundamental law of the association of the Dioceses over which it presides.

Two reflections are suggested by the language of this provision, and its meaning, which appear to be worthy of note.

One of these is that a Bishop is not only consecrated, that is admitted with due solemnities to the exercise of certain functions superimposed upon his existing order of Priesthood, but that he is likewise ordained, that is admitted to an order which he did not before possess; so that the expression, "ordained and consecrated," used in the amendment is by no means to be looked upon as a pleonasm, but as the declaration of a principle, and as a safeguard against a possible wrong inference from the use of the word consecrated, without the accompanying word which shows the nature and effect of consecration.

The other reflection is that as the act of ordination and consecration is required to be by several Bishops, that act is the act of each one who participates in it; so that the act is not the act of one Bishop with which others are associated as witnesses, but an act in which all the Bishops acting are co-operators. The importance of this principle to the preservation of the actual succession from the beginning to the end of the transmission of the Episcopal order is manifest; since the possibility of the failure of that succession through the incapacity of an individual actor to transmit it, is balanced by the extreme improbability—not to say impossibility—of the same incapacity existing in the case of several actors in a consecration. And when it is considered that this rule of several co-operating Consecrators has prevailed since the most ancient times, it is evident both that the rule has provided the best possible testimony to the fact of the transmission of that succession in the past history of the Church, and that the continuance of the rule pro-

vides the best possible means of securing the transmission of that succession in the future.

Attention has thus been called to the provisions of the first two sections of Article II., as being in part a reproduction of the former Article 4, and in part an expansion of its purport and effect. But before leaving this part of Article II., it seems important to consider the significance of a change in phraseology from that of the former Article 4, which it has in the main re-established.

The opening words of Article 4, were "The Bishop or Bishops in every Diocese shall be chosen agreeably, etc." The language of Article II., in the same connection is, "In every Diocese the Bishop or the Bishop Coadjutor shall be chosen agreeably, etc." It has already been observed that the language of Article 4, was the same as had been adopted from the origin of the Constitution, except in the use of the word State instead of the word Diocese. The apparent difference between that language, and the language of the present Article II., is that whereas formerly the provision covered the choice of any manner or number of Bishops which it might become expedient to have in a State or Diocese, now the nature and number of Diocesan Bishops is definitely determined by the language used; so that there is not at present under the Constitution the same liberty in the Diocese, which was formerly left to it in the matter of multiplying Bishops.

Of course it has always been understood that on Church principles, the Episcopate being the centre of the unity of the Church, there could ordinarily be but one Bishop in a Diocese. But exceptions to this rule have also always been understood to be possible and justifiable. The Bishop of the Primitive Church, for example, whose jurisdiction extended not only to the city in which his seat was settled but also to the Paroichia or neighbouring region, had sometimes his Chorepiscopus, or country Bishop who exercised Episcopal functions under him in the outlying districts. Coadjutor Bishops also in aid of Diocesan Bishops have always been allowed, as not inconsistent with the principle of unity; and Bingham records instances of the recognition of the fact that "the allowing of two Bishops in one city, in some certain circumstances, and critical junctures, was the only way to put an end to some long and inveterate schism." (Christian Antiquities, Book II.

Ch. XIII., Sec. 2.) A more modern exception which, however, appears under the civil sanction of a Parliamentary act in the reign of Henry VIII., is to be found in the establishment of what are known as Suffragan Bishops with functions analogous to those of the Chorepiscopi of ancient times; that is those of supplementing under the direction of the Bishop of the Diocese his Episcopal oversight of certain parts of his See. The title is unfortunate and confusing, inasmuch as all the Bishops of a Province are Suffragans in the proper sense of ecclesiastical language, because they attend the Councils called by the Archbishop or Metropolitan of the Province to give their suffrages or votes upon measures submitted to their consideration. But the Suffragan of modern times is a Bishop distinguishable from a Diocesan Bishop in respect of the subordinate and limited nature of his jurisdiction, and distinguishable from an Assistant or Coadjutor Bishop in respect of the right of succession to the See upon the decease of the Diocesan, which the Coadjutor has, and the Suffragan has not.

These facts were, doubtless, not unknown to the founders of our American system. At any rate the founders would appear from the language of Article 4, to have refrained from placing any limit upon the application of the precedents which these facts furnished for action on the part of the Church in any State; which accordingly was at liberty to proceed to such choice of Bishops as might appear to its Convention to be expedient. Of this liberty the Convention of the Church in the State of New York availed itself by the election to the Episcopate of the Rev. Dr. Benjamin Moore, consequent upon a resignation of jurisdiction by Bishop Provoost. The House of Bishops, before whom the matter came at the General Convention of 1801, while declining to recognize Bishop Provoost's resignation, expressed a readiness to consecrate a suitable person under the circumstances; but were "explicit in their declaration that they shall consider such a person as assistant or Coadjutor Bishop during Bishop Provoost's life, although competent in point of character to all the Episcopal duties; the extent in which the same shall be discharged by him, to be dependent on such regulations as expediency may dictate to the Church in New York, grounded on the indisposition of Bishop Provoost, and with his concurrence." The Consecration of Bishop Moore was accordingly

consummated, and the certificate of his Consecration declares it to have been "into the office of Bishop of the Protestant Episcopal Church, in the State of New York, to which the said Benjamin Moore, D.D., hath been elected by the Convention of the said State, in consequence of the inability of the Right Rev. Bishop Provoost, and of his declining all Episcopal jurisdiction within the said State." (Bioren's Journals, pp. 202, 206.)

The precedent furnished by this case appears to have settled the status of an assistant or Coadjutor Bishop, as elected by the Convention of the State, or Diocese; to the exercise of a jurisdiction determined by the concurrence of the Convention and the Bishop of the Diocese; until the decease of such Diocesan; with the right of succession upon that decease. And the General Convention willing to repair by legislation any defect in the Constitutional provision on the subject, has by canon, in the line of this precedent prescribed the position and function of the Coadjutor; adding to this the following express statement: "No person shall be elected or consecrated a Suffragan Bishop, nor shall there be more than one Bishop Coadjutor in a Diocese at the same time." (Tit. I., Can. 19, Sec. V.)

These things being so, and the question being as to the significance of the phraseology in the opening of Article II., it would appear that the Constitution as amended has used the language cited, in the sense which canonical and common usage had given to it; and that when Article II. speaks of "the Bishop or the Bishop Coadjutor" in every Diocese, it denotes one Bishop of each kind as the only Bishops for whose choice at any given time it makes provision. The Convention of a Diocese has then no right under the Constitution to any further choice, or to any extension of its Episcopate beyond that limit; and since the Constitution recognizes no other right to the choice or appointment of Diocesan Bishops than such as is reserved to the Diocese, it is beyond the scope of the legislation of General Convention to make such extension. It would seem, therefore, that the existing Canonical prohibition of additional Coadjutors and of Suffragan Bishops is now included also in the Constitution.

Section 3 of Article II. is an expansion of the latter part of the former Article 4, which was as follows: "Every Bishop of

this Church shall confine the exercise of his Episcopal office to his proper Diocese, unless requested to ordain, or confirm, or perform any act of the Episcopal office in another Diocese by the Ecclesiastical authority thereof." This same provision with one important difference, beside that so often necessary to note of the use of the word State instead of Diocese, had been in the Constitution from the beginning. The difference was that the original exception to the restricting of the Bishop to his proper jurisdiction was, "unless requested * * * by any Church destitute of a Bishop." In effect the principle was recognized from the beginning of our System (as it had been in the Church at large, so early that the Nicean rule in 325 was based on the ground that the "ancient customs" should prevail), that no Bishop should intrude into the jurisdiction of another, but confine himself to the affairs of his own Diocese. But the form in which the principle was at first stated in this country, was due to the fact that there was no Bishop in the number of those States which were then associating themselves; and afterward but three Bishops in all in the States which actually did associate themselves in 1789. The rule adopted under these circumstances, although it was the counterpart of the Catholic rule, was designed therefore not so much to protect the Bishops from the intrusion of other Bishops, as to protect the Churches in the States which were yet without Bishops from being Episcopized against their will by the Bishops of other States. The continuance of the provision in this form for many years after all the States, or Dioceses in the later terminology, were supplied with Bishops, had the singular, and doubtless unanticipated result of placing it constitutionally beyond the power of the Bishop of a Diocese to invite another Bishop to officiate within his jurisdiction; since such invitation could not be said to proceed from a "Church destitute of a Bishop." It was not until 1874 that the requirement of the request of the Ecclesiastical authority of a Diocese was substituted for the requirement of the request of a Church destitute of a Bishop. The rule as settled in 1874 has been embodied in the present Section 3 of Article II., and the exceptions to the rule have been extended by several additions, which are plainly specified, and seem to require no explanation. Section 3 is as follows:

"A Bishop shall confine the exercise of his office to his own

Diocese or Missionary District; unless he shall have been requested to perform Episcopal acts in another Diocese or Missionary District by the Ecclesiastical Authority thereof, or in a vacant Missionary District by the Presiding Bishop of this Church, or unless he shall have been authorized and appointed by the House of Bishops, or by the Presiding Bishop by its direction, to act temporarily in case of need within any territory not yet organized into Dioceses or Missionary Districts of this Church."

Article II. concludes with a brief section which is entirely new in the Constitution, although the subject of it had been quite fully legislated upon in Sec. xvi. of Canon 19 of Title I. of the Digest of Canons of General Convention. The section is as follows:

"Sec. 4. A Bishop may not resign his jurisdiction without the consent of the House of Bishops."

It has been noted above that in 1801 on the first occasion in our history in which a resignation of jurisdiction occurred, the House of Bishops declined to recognize it as effectual. The matter came before that House by the presentation on the part of Bishop White of a letter addressed to him as President by Bishop Provoost of New York, and by a message from the House of Clerical and Lay Deputies inquiring whether the House of Bishops had received any communication from Bishop Provoost on the subject. The letter of Bishop Provoost appears to express the conviction entertained by the writer that it was a duty of courtesy to the House of Bishops that information should be communicated to "that venerable body" of the act of resignation already performed; but contains no recognition of any authority of the House in the premises. Induced by ill health, and melancholy occurrences in his family, and a wish to retire from public employment, Bishop Provoost says, "I resigned, at the last meeting of our Church Convention, my jurisdiction as Bishop of the Protestant Episcopal Church in the State of New York."

It is really not a little remarkable that, with no express rule before him, and with no precedent to guide him in this matter, Bishop Provoost should have taken the course which he did in resigning his jurisdiction into the hands of the Convention of the Church in the State of New York, conformable to sound principle as that course appears to have been. From the Episcopate of the

Church of England he had received his Episcopal order, and that general or universal mission which constitutes jurisdiction in its larger sense, and which is the necessary accompaniment of a valid consecration to the Episcopate. But the lawful localization of this universal mission, which constituted his jurisdiction in the narrower sense of the right to exercise his Episcopal office in a certain field or place, he had received from the Convention of the Church in the State of New York; which had elected him to be the Bishop of the Church in that State; which had received him in that capacity after his Consecration, and upon which would devolve the right and duty of electing his successor. It was, therefore, natural, and in accordance with just reason based upon sound principle, that Bishop Provoost should have resigned his jurisdiction, in the only sense in which he was capable of resigning it, into the hands of the Convention of the Church in the State of New York; and it is a pleasure to observe the courteous spirit which characterized his relations with the members of the House of Bishops (then living), and led him to apprise them of an event which, as he evidently realized, could not fail to be of interest to them.

But principles are correlative as well as facts, and it is not unnatural on the other hand that the House of Bishops should have regarded that aspect of the case which affected not only the Convention of the Church in the State of New York, but also those who were partakers with the Bishop of New York in that larger mission which belonged to them by virtue of their common consecration to the Episcopate, and which gave them an interest and concern not only in that part of the Church particularly entrusted to their individual care, but also in all that related to the welfare of the whole flock of Christ, of which He had commissioned them to be the Shepherds. Their feeling of the responsibility thus indicated is apparent from the action taken by the Bishops, which is recorded in their Journal in the following appropriate words:

"The House of Bishops having considered the subject brought before them by the letter of Bishop Provoost, and by the message from the House of Clerical and Lay Deputies, touching the same, can see no grounds on which to believe that the contemplated resignation is consistent with ecclesiastical order, or with the practice of episcopal churches in any ages, or with the tenor of the

office of consecration. Accordingly, while they sympathize most tenderly with their brother Bishop Provoost, on account of that ill health and those melancholy occurrences which have led to the design in question, they judge it to be inconsistent with the sacred trust committed to them to recognize the Bishop's act as an effectual resignation of his episcopal jurisdiction." (Bioren's Journals, pp. 201, 202.)

Neither of the precedents thus established, either by the act of Bishop Provoost or by that of the House of Bishops, has in the later practice of the Church been followed. In process of time there have appeared to be reasons sufficient to justify the resignation of jurisdiction in particular cases. Whether the difficulty could not have been met as it was by the House of Bishops in the case just considered, by provision for the consecration of a Coadjutor to perform duties to which the Diocesan was no longer competent or congenial, without such resignation, is a question which it is of no use to discuss. The subsequent judgment of the Church has ruled otherwise, and the Canons of General Convention have recognized the practice of resignation of Episcopal jurisdiction, and made formal provision for making such resignation effectual by the concurrence and consent of the House of Bishops. The concern of the Diocese in the matter has not in this legislation been expressly mentioned. Whether it has been assumed that the Diocese would desire such resignation, or that it would have opportunity of passing upon it before the authorized application to the House of Bishops, or whether the just right of the Diocese has been ignored, or simply forgotten, does not appear. In fact the legislation has required the resignation to be presented to the Presiding Bishop, and acted upon by the House. And the sentence in the amended Constitution which deals with the subject, does so only in view of the relations of the resigning Bishop to the House of which he is a member, and as if the House of Bishops had designated and determined the jurisdiction of the Bishop of a Diocese, equally with that of the Bishop of a Missionary District. However, this sentence, brief as it is, is a valuable addition to the Article which it concludes, inasmuch as it settles the right of the resignation of Episcopal jurisdiction with the concurrence of the House of Bishops, and thus affords a constitutional basis for the legislative action on the subject by General Convention.

ARTICLE III.

BISHOPS FOR FOREIGN LANDS.

The process of amendment which we are following has transferred the former Article 10 to the position of Article III. of the new Constitution; and along with the transfer has accomplished certain changes in phraseology, omitting some provisions, and introducing one substantial addition to the provisions previously made. In respect of each of these three changes Article III. appears to be an improvement upon the former Article 10.

Probably the general habit of Constitutions is to conclude with a provision relating to their establishment or the mode to be adopted in the event of alteration. At all events there seems to be a certain fitness in the conclusion of an instrument of that sort with an Article which in some sense sums up the matters previously treated, and as it were formally submits them to the use of those for whom they have been prepared; and such was the purport of Article 9, with which the Constitution used to conclude before the addition of Article 10. After such a valedictory, to go on formulating new matter in a kind of postscript, gives to the instrument a rather unfinished appearance; and when we find this late provision in the form of Article 10 (attributed in a foot note to the year 1844), immediately followed by the solemn declaration that it was DONE IN 1789, the reflection perversely forces itself upon the humorous that it must have been somewhat overdone by the time it was served. So that in point of symmetry, and in the interest of due gravity, there is certainly a great gain in the change of position assigned to it by the recent amendment.

The greater part of the changes made in the text of Article 10 being matter of phraseology, it will be sufficient, without detailed comparison, to quote Article III. as it stands in the Amended Constitution, noting afterwards the omission and addition involved in its adoption. It is as follows:

"Bishops may be consecrated for foreign lands upon due appli-

cation therefrom with the approbation of a majority of the Bishops of this Church entitled to vote in the House of Bishops, certified to the Presiding Bishop; under such conditions as may be prescribed by Canons of the General Convention. Bishops so consecrated shall not be eligible to the office of Diocesan or of Bishop Coadjutor of any Diocese in the United States or be entitled to vote in the House of Bishops, nor shall they perform any act of the episcopal office in any Diocese or Missionary District of this Church, unless requested so to do by the Ecclesiastical Authority thereof."

In former phases of the Constitution, characterized as they were by the entire absence of allusion to the Missionary work of the Church, or to the connection of any Bishops with that work, the appearance of an Article providing for the consecration of Bishops for foreign countries gave occasion, perhaps not unnaturally, to a first impression in some quarters, that the reference to Bishops for foreign countries indicated Bishops sent thither as Missionaries of this Church. Closer consideration of the Article, however, and a comparison of its terms with those of the Canons of General Convention providing for the consecration of Missionary Bishops, which bore no kind of relation to this Article, would convince any one that the object of this Article was of an entirely different character. And the fact that the Constitution in its present phase does in several parts distinctly recognize and provide for Missionary Bishops and their work, would, of course, entirely remove ground for this misapprehension.

When one recalls the condition of the Church in the Colonies before the Revolutionary War in this country, and in the States after its termination, and the unwearied fruitless efforts to obtain from the Bishops of the Church of England the gift of that consecration which would enable the Church here to have Bishops of its own; and remembers that the repeated failure of these efforts was the result not of unwillingness, or the absence of sincere desire on the part of English Bishops to communicate that gift, but of their conceived want of legal capacity to impart it; one seems to see just reason why the Church in this country, having finally attained to the fulness of the possession of the duly transmitted Episcopate, should be conscious to itself of the desire to make the like provision for others, in the supply of such need as in times past it had so

sorely felt; and of its duty to take such measures as would assure its own Bishops of their perfect freedom and legal right to impart unto others that good thing which they themselves had received.

Such would seem to have been the design in which this Article was conceived, and which its terms are adapted to fulfill; and no serious criticism seems to be applicable either to the design, or to the terms providing for its fulfillment. There is, however, a certain difficulty inherent in the subject to which it relates; and it is not impossible that some embarrassment may result, if such has not already resulted before the present amendment, from the endeavor to accomplish its purpose in particular instances. A foreign land in which there now exist conditions exactly similar to those in the early history of our country, is probably unlikely to be found. Foreign lands are either not Christianized, in which case they may be the object of missions, or they are under the jurisdiction of some already settled branch or form of Christian Church, in which case there may possibly arise the question whether "Application therefrom" may not be made before it is "due." Still it is possible that a foreign mission may result in the establishment of a Christian community so firmly settled in the principles of this Church as to be capable and desirous of becoming an independent ecclesiastical organization, in which case Bishops of its own would be essential. And it is also possible that such a condition may exist in a country partly or wholly under the direction of an organized form of Christianity, as may justify the action of persons whose spiritual needs are either not supplied or are injuriously set at nought and outraged by such organization, in associating themselves together in the form of a distinct Church, which they would be fain to connect with the visible Church of Christ's foundation by the only legitimate bond of continuity provided for that purpose. Under conditions of this kind an application for the Episcopate would seem not only to be necessary to the perpetuity of such association, but also to furnish opportunity for the exercise, on the part of the Bishops to whom it was made, of that Christian charity, the essence of which, or at least of the expression of which, lies in the doing unto others as they would others should do unto them. It is difficult to speak clearly upon this subject without going to a greater length than would be appropriate to the present undertaking. The

mist which befogs the Christian conscience on all matters touching its relation to the visible Church of Christ arises from the unhappy divisions which have drawn it from the exalted position of the city which is set on an hill, down into the tangled morass of disputed claims and controverted positions. Without metaphor, however, it is clear, on recurrence to the fundamental principles of the original Constitution of the Church, that if there are, among those who profess and call themselves Christians, some organizations which in their endeavor to hold fast the Faith and Sacraments of Christ have ceased to hold to the Apostolic Ministry of His appointment; and others which, with professed adherence to that Ministry, have depraved the Faith and debased the Sacraments which are its complement, there is reasonable ground on which those who are firmly persuaded that they hold all these essentials in their integrity should be willing to extend to those like minded with them, such aid as they may seek in order to the fulfilment of spiritual aspirations which are clogged or stifled under an administration which claims their allegiance without satisfying their needs. After all, the whole case depends, in every instance of this aspect of it, upon the justice of the grounds upon which application for aid in the perpetuation of a corporate existence is based. If the grounds are not just, the separate existence is schismatical, and there is no call upon this Church to add the Episcopal exponent of unity to a schism; if the grounds are just, the guilt of the schism lies, upon Catholic principles, on those who have made such separation necessary, and a proper opening is made for the exercise of that general concern for the welfare of the Church, irrespective of Diocesan limits, which is characteristic of the Episcopal office, and to refrain from which would indicate an absence of Christian charity and Christian courage, on the part of the Episcopate whose aid had been sought.

These things being considered, and bearing in mind also the need of due circumspection, without which rash and indiscreet proceeding may mar even what appears to be just action, it seems that the provisions of this Article, especially in its present form, are eminently wise; and that they furnish all the safeguards which the Constitution can properly supply. To establish the right of the Bishops to act in the discharge of the charitable duty which may be

presented to them; and at the same time to relieve them from the burden and responsibility of choosing or declining a course in which their sympathies would naturally be keenly enlisted, by affording that balance to their judgment which would be supplied by a general law, adopted with their own approval, prescribing beforehand and apart from the urgencies of special interests, the conditions on which the consecration in question should take place, seems to be taking the ground of right principle, and using all needful precaution against the possible perversion of that principle.

It is the insertion of this clause in regard to the prescribing of conditions by Canon of General Convention, which constitutes the addition made in Article III. in amendment of the former Article 10. And this addition apparently accounts for the omission in Article III. of those provisions of Article 10, which required that the approbation of the majority of the Bishops to a proposed consecration of this sort should be given upon their being satisfied that the person designated had been duly chosen and was properly qualified; and that the order of Consecration in the case should be conformed as nearly as possible, in the judgment of the Bishops, to that used in this Church; since provisions like these would rightly and naturally be included among the conditions left to be prescribed by Canon.

For the rest, as already remarked, the changes made in the amendment are verbal, and are so plain as apparently to require no comment.

ARTICLE IV.

STANDING COMMITTEES.

One of the first steps taken by the Churches in the States after their association under the Constitution was to provide in their General Convention for the establishment in each one of a Standing Committee, to be appointed by the Convention of the Church in the State. The Canon in which this provision is made is the sixth of a series of seventeen adopted at the October session of 1789 in the House of Clerical and Lay Deputies on the 15th, and in the House of Bishops on the 16th of October, the Constitution having been adopted on the second day of that month. (Bioren's Journals, pp. 77, 83, 84, 92, 95.)

This sixth Canon included Canons six and seven of a series of ten Canons adopted in the previous session of that year, on the 5th of August (Ib. p. 59); the first seven Articles of the Constitution, including those empowering General Convention to take legislative action, having been formally adopted and declared to be "a rule of conduct for this Convention," on the first day of that month. Ib. 52.)

This provision in regard to the Standing Committee is introduced in connection with requirements as to the recommendation to the Bishop, of Candidates for Holy Orders, and the Canon first assumes the existence of such Standing Committees by assigning to them certain functions in this matter, and then provides that "in every State where there is no Standing Committee, such committee shall be appointed at its next ensuing Convention." Canonical provisions in reference to these Standing Committees have from time to time been made by General Convention, devolving upon them additional duties, and Canon 2 of Title III. of the Digest in which their position was described, has now been in substance embodied in Article IV. of the Constitution, which is as follows:

"In every Diocese a Standing Committee shall be appointed by the Convention thereof. When there is a Bishop in charge of the

Diocese the Standing Committee shall be his Council of advice; and when there is no such Bishop the Standing Committee shall be the Ecclesiastical Authority of the Diocese for all purposes declared by the General Convention. The rights and the duties of the Standing Committee, except as provided in the Constitution and Canons of the General Convention, may be prescribed by the Canons of the respective Dioceses."

As appointed by the Diocesan Convention the Standing Committee is the agent and representative of that Convention, and subject to its Canonical direction as to all matters not otherwise provided for by the Constitution, and by the Canons of General Convention. That the Constitution should devolve, and empower General Convention to devolve, upon it certain rights and duties is well; and that the Canons of the Convention of the Diocese in this as in other matters are subordinate in their obligation to the Constitution, and the constitutional acts of General Convention is true. But certainly this would have been equally true if the last sentence of this Article had been omitted; and to recognize so formally the power of the Diocesan Convention to prescribe rules for its own agent, provided such rules did not contravene those of higher obligation, was perhaps hardly necessary.

As the representative of a Convention composed always of Clergy and Laity, as well as in conformity to fundamental ideas in the American representative System, the Standing Committee of the Diocese has generally been composed equally of Clerical and Lay members. There is, however, no provision in the Constitution, or in Canons of General Convention, either as to this point, or in regard to the number of which the Committee shall consist; these matters being left to the determination of the Diocesan Convention. In fact, as to the former point, the general practice is that the Standing Committee is composed of an equal number of Clergymen and Laymen; there having been, it is believed, only two of the Dioceses, namely Connecticut and Maryland, in which the appointment has been limited to the Clergy. It is probable that in these instances the limitation was originally based upon a conceived analogy between such a Committee and the Bishop's Council, which in older Systems had existed, and had been composed of Clergymen. From the most primitive times the Bishop, distinguished in this

respect from an arbitrary ruler imposing upon his subjects the determinations of his own will, had been accustomed to associate with himself a body of his Presbyters, who were in more direct communication with the people than he could be, with whom he could take counsel as to the welfare of the Church, and the course best suited to promote it: and for a long period after the Apostolic age, the only Synods known were those of the Diocese, whereby the Bishop might be well assured that the measures which by his authority were imposed, were such as met with the approval and concurrence of those to whom they were directed. Under the American Ecclesiastical System, however, the Convention of the Diocese supplies the place of the old Diocesan Synod, which was but the Bishop's Council, or an amplification of it; and as that Convention could not be expected to be always accessible, it is easy to see how the idea should be conceived, that the Standing Committee of its choice might hold this advisory relation to the Bishop; how the association of the Laity with the Clergy in that Committee as well as in the Convention should appear to the Dioceses in general to be quite consistent with this function; how the idea should be recognized and formulated in the Canons of General Convention; and how, finally, it should come to be embodied in the Constitution. And although the provision of the Constitution is not so wide as that of the Canon, which authorizes the Bishop to summon the Committee when he wishes for their advice, and the Committee to meet of their own motion when they wish to advise; yet no doubt these are but Canonical details suited to the application of the general principle now stated in the Constitution, that the Committee are the Bishop's Council of Advice.

Thus to the duty of guarding the portals of the Ministry, assigned to them by making their recommendation the necessary preliminary to ordination, has been added the duty of acting as the Constitutional advisers of the Bishops in their respective Dioceses, when there is a Bishop in charge of the Diocese. When there is no Bishop in charge of a Diocese, as might happen in case of a vacancy in the See, or in case of prolonged absence, or disability of some kind on the part of the Bishop, there is further imposed upon the Committee the duty of acting as the Ecclesiastical Authority of the Diocese. Of course the time and occasion of assuming the position

of Ecclesiastical Authority in a Diocese are not left to the determination of the Committee, but are designated by Canon; the Constitution providing that when there is no Bishop in charge, the Committee "shall be the Ecclesiastical Authority of the Diocese for all purposes declared by the General Convention."

That declaration is made by Canons devolving on the Committee certain duties which would, under other circumstances than those designated, be performed by the Bishop. Yet those duties are not such as belong to the Bishop as Bishop, but duties which belong to him as being in charge of the Diocese—that is to say, they relate to matters of exterior jurisdiction, and not to matters of spiritual jurisdiction. There are necessarily affairs of temporal concern which naturally or canonically are dependent upon the Episcopal care when there is a Bishop in charge; but when that is not the case these affairs must either be postponed and neglected, or given into the care of others who may be fitted to discharge them, even though not qualified for the discharge of Episcopal Authority properly so called. And this is what is meant by making the Standing Committee the Ecclesiastical Authority of the Diocese under circumstances canonically specified. The jurisdiction thus held is much of the same sort as that which in England resides in the Chapter during the vacancy of a See; and involves the management of certain Diocesan affairs which would be managed by the Bishop if the See were full. Only it is to be observed that such jurisdiction as the Standing Committee has is purely statutory in its nature, and involves no power beyond that which by Constitution and Canons is specifically conferred upon it.

Beside these Standing Committees of Diocesan appointment, there are certain others which are provided for in the Canons of General Convention to fulfill somewhat analogous functions in the Missionary Districts of the Church, and in the regulation of affairs connected with the administration of the Churches or Chapels designed for the use of members of the Church sojourning in foreign countries other than Great Britain and Ireland. These Standing Committees are not those referred to in Article IV. of the Constitution, which we are now considering, and should not be confused with them. Their canonical creation is the result of the exercise, by the common government of the Church, of that

care over its dependencies which is the common responsibility of all the Dioceses. That care is exercised in the case of the Missionary Districts by the appointment of Missionary Bishops to oversee and direct them in their development; and, with a view to the making of that oversight and direction more effective, the Missionary Bishops are authorized to appoint and associate with themselves such Committees. In the case of the foreign Churches, one such Committee is authorized to be appointed by a Convocation of Clergy and Laity representing those Churches: and here the object is plainly to provide some recognized medium of communication between them and the Presiding Bishop, or other Bishop of this Church to whose care they are by Canon entrusted, and to aid him in the discharge of the duties involved in that trust. (Cf. Tit. I., Can. 19, Secs. vi [5] and vii [7], and Tit. III., Can. 3, Sec. iii.)

ARTICLE V.

ADMISSION AND RE-FORMATION OF DIOCESES.

An amended fifth Article to the Constitution proposed in 1898, not being ratified in 1901, the former Article of that number remained in force. It will be most easily understood by reference to the several stages of its historical development.

The Article stood as Article 5 in October, 1789, in the following words:

"A Protestant Episcopal Church in any of the United States, not now represented, may at any time hereafter be admitted on acceding to this Constitution."

Exactly in this form the Article had been adopted in the session of the previous August, and the same sentence with an additional clause, which will be noticed later, has been retained in the Article to the present time. In Article VII. of the preceding drafts of 1785 and 1786 the same thing was provided for in the following language:

"A Protestant Episcopal Church in any of the United States not now represented, may at any time hereafter be admitted, on acceding to the Articles of this union."

The clause just referred to as added to the Article of 1789 consisted of the words "or any Territory thereof," inserted after the word "States," so that the Article read, "A Protestant Episcopal Church in any of the United States or any Territory thereof, not now represented, may, at any time hereafter, be admitted on acceding to this Constitution." The extension of the right of admission to the Church in any Territory of the United States, as well as to the Church in any of the States, met the case of a Church in a Territory which might be ready to seek admission into the

Ecclesiastical Union, before the Territory had been, or was ready to be, admitted as a State in the Civil Union; this condition having been in fact attained in the case of the Church in the Territories of Michigan (1832), and Florida (1838). But as adopted in 1789(and amended by the reference to the Territories, the Article remained for many years, until without being repealed or changed, it was included in an amended Article, which added to it a long series of provisions relating to an entirely different matter. The first paragraph of this amended Article is, "A Protestant Episcopal Church in any of the United States, or any Territory thereof, not now represented, may, at any time hereafter, be admitted on acceding to this Constitution: and a new Diocese, to be formed from one or more existing Dioceses, may be admitted under the following restrictions, viz.:." Then follow four extended paragraphs of specification under the second branch of this paragraph.

It is obvious, both from its history and its language, that the Article, as thus amended, provides, *first*, for the case of the admission of a Church in a State or Territory not already represented; and, *second*, for the case of the admission of a new Diocese formed from one or more existing Dioceses; and these cases are essentially distinct, although the distinction has not always been observed since it was introduced by the amendment last noted. In the case of an admission of a Church in a State or Territory not before represented, there is one only condition prescribed, and that is that it should accede to the Constitution. There is not even required by the Constitution any formal Act of General Convention by way of consent to the admission. The propriety of such an act may be argued from analogy or on other grounds, but, proper as such an act may perhaps be, the recognition of the propriety involves no right on the part of General Convention to refuse to admit. The Constitution has once for all given the requisite permission, and a Church so situated, on acceding to the Constitution, has the right to avail itself of the permission once for all given. Its duly accredited Deputies may take their seats in the House of Deputies; and its Bishop, if it have one, may take his seat in the House of Bishops, without let or hindrance.

The amendment proposed in General Convention in 1898, but

not ratified in 1901, was so framed, presumably with intention, as quite to obliterate the distinction which has been noted. (Journal, 1901, p. 232.) And although the proposed amendment did not prevail, yet another amendment was proposed in 1901 which is to be acted on in 1904, which, as to this point, is to the same effect, prescribing several additions to the conditions of admission, and providing explicitly for "the consent of the General Convention * * * under such conditions as the General Convention shall prescribe by general Canon or Canons." (Journal, 1901, p. 572.) Perhaps it is time that the distinction should be done away with, and that the Constitution should recognize the necessity for some formal consent of General Convention, and for prescribing additional conditions upon which that consent should be given. Still there is something of a parable in the difference of the attitude of Churches in the Union toward those out of it, now and in former times. Meanwhile, however, the distinction exists, and all of the four paragraphs which follow the first in the present Article V, are qualifications of the provision that "a new Diocese to be formed from one or more existing Dioceses, may be admitted under the following restrictions, viz.:——"

To speak as briefly as possible of these restrictions it may be observed that the first is that no new Diocese shall be formed within the limits of another Diocese, nor by the junction of two or more Dioceses, or parts of Dioceses, unless with the consent of the Bishop and Convention of each of the Dioceses concerned. This consent having been given, there is next to be given the consent of General Convention; and General Convention is authorized to give this consent upon certain specified conditions, and not otherwise. These are (1), that it have satisfactory assurance of suitable provision for the support of the Episcopate in the new Diocese; (2) that the new Diocese shall have a prescribed number of Parishes and Presbyters, and that no such Diocese shall be formed if thereby any existing Diocese shall be so reduced as to contain less than a specified number of Parishes and Presbyters; and (3) that no city shall form more than one Diocese.

The Article then provides that where a Diocese is divided into two or more, the Diocesan of the divided Diocese may elect the one to which he will be attached, and that the Coadjutor, if there be

one, shall take the other of two, or have his choice between the others if there be more than two. The remaining paragraph provides for the retaining by new Dioceses of the Constitution and Canons of the old Diocese, from which they have been formed, until the same be changed; or, if a new Diocese be formed out of two or more existing Dioceses, it is to retain the Constitution and Canons of that Diocese which had the greater number of Clergy prior to the erection of the new Diocese, until the same be changed by the new Convention.

ARTICLE VI.

MISSIONARY DISTRICTS.

The provisions of Article VI. are entirely new in the Constitution, although the substance of a part of them was previously embodied in Sec. vi. of Canon 19 of Title I. of the Digest. The Article relates to the assignment or apportionment of territory included within Missionary Districts; authorizes the House of Bishops to establish Missionary Districts in such territory as may not be under Diocesan care, and to canonically redistribute the territory; empowers General Convention to accept cession of part of the territorial jurisdiction of a Diocese, and to cede back such jurisdiction, under specified conditions; and supplies a constitutional basis for future legislation of General Convention in regard to the organization of Missionary Districts when established.

Under Section 1 the House of Bishops has power to "establish Missionary Districts in States and Territories or parts thereof not organized into Dioceses. It may also from time to time change, increase, or diminish the territory included in such Missionary Districts;" although it may not exercise this latter power merely of its own motion, but "in such manner as may be prescribed by Canon." In other words, in any State or Territory not organized into a Diocese the House of Bishops may establish a Missionary District; and that Missionary District need not include the whole of such State or Territory, but may include only that part of such State or Territory in which the House of Bishops may think proper to establish the District. But the District once established in accordance with this authority, the House of Bishops can proceed in respect to the change, increase, or diminution of the territory included within it, only in such manner as may be prescribed by Canon.

It may not be amiss to consider, in passing, the bearing of this power of establishment, and change of the territorial limits of

Missionary Districts, upon what may be regarded as the hitherto settled policy of this Church in respect of the inclusion of Dioceses within the boundaries of the States composing the Civil Union. It will probably not be questioned that from the very earliest, even Apostolic times, the custom of the Church has been to note the salient points of Civil jurisdiction, and to plant the Church at these points as affording the most suitable and effective centres from which its influence might spread. Whatever might have been the motive which produced the fact, the fact itself is venerable: and can hardly fail to be regarded as indicating a policy entitled always to be most respectfully considered, and not to be abandoned in principle without the gravest and most urgent reason. And it is plain that the Church in this country in the organization of its working system, while it did not follow the primitive *rule*, did most entirely act upon the primitive *principle* in this respect. It did not select the city as the seat or Diocese of the Bishop, the base of its operation, and the unit of its organization, according to the primitive practice; because the city was not, as it had been in the primitive times, the unit of the civil organization in which its work was to be done; but it selected the State, to which it stood in the process of its organization in the same relation as the primitive Church had held to the city. The State, in fact, was the unit of the civil system within which the Church was to work; and the Church in the State became, in fact, the unit of the Ecclesiastical System, the Diocese being conterminous with the State. And while in process of time, and under the exigencies of the needs of the growing Church, Dioceses have been multiplied in the regions of the older settlements; yet the increase has been by the formation of new Dioceses out of those before conterminous with States. In no instance, it is believed, has a new Diocese been so formed as to include parts of two States; and thus in principle the primitive policy has not been abandoned, although the mode of its application has necessarily been changed.

Such adherence is not a little remarkable, and especially so in view of the fact that it has never been enjoined either by Constitution or Canon. More than this, it has continued, notwithstanding the fact that it would have been quite within the letter of the Ecclesiastical law that a new Diocese should have included

territory within two adjoining States. The Constitution has for some years authorized the formation of a new Diocese out of one *or more* existing Dioceses; so that it would have been constitutionally possible to have formed a Diocese out of adjacent parts of two or three States, previously in as many different Dioceses. There seems in fact to have been a sort of instinct in the matter, and perhaps we are justified in the hope that the guidance of the future may be in the same direction.

Still the possibility of departure from this policy, under the pressure of what may appear to be particularly expedient, seems to be much increased by the provisions of Article VI., to which reference has now been made. If we consider that a Missionary District is ordinarily, and is expected to be, a Diocese in the future, and reflect that it is quite within the constitutional rights of the House of Bishops to establish a Missionary District in a part of a State or Territory not organized as a Diocese, it is easy to see that a part of one such State or Territory might be established with a part of another such State or Territory, in one Missionary District, which in time would naturally be a Diocese existing within the lines of adjacent States. So far as this possibility is enhanced by the power to change, increase, or diminish the territory included in a Missionary District, it may of course be recognized and limited by the canonical action required by the Article. The Constitution, however, either in this Article VI., or in Article V., which regulates the formation of a new Diocese out of one or more previously existing, makes no provision against the inclusion of a Diocese within the lines of adjacent States. In Article V. there is a provision which seems to have had in mind the observance of primitive rule in the requirement that "no city shall form more than one Diocese." But it is an instance of what is not altogether unknown in other cases, namely, the adoption of a primitive rule, without due apprehension of the principle of that rule. The proper application of the principle in this case would have been the provision that no Diocese should be situated within more than one State. The proposed amendment to Article V., which is to come up in 1904, and to which reference has already been made, appears to recognize the fact that it is not necessary to provide that no city shall form more than one Diocese, since it excludes that pro-

vision. The proposal of that amendment furnishes an excellent opportunity for the inclusion of a provision to the effect that no Diocese should be within more than one State.

Whether the opportunity may not also be properly taken in the final shaping of that amendment, or, possibly, of an amendment to the present Article VI., to recognize the distinction, which exists in several respects, between the Missionary work of the Church in such Territories as are in the outlying regions of the States composing the Civil Union in North America, and such Territories of the United States as are situated in other parts of the world, is a question which must be left to the wisdom of those upon whom the responsibility of deciding it rests. It is merely noted here that, under the present provisions of Article VI. the House of Bishops has the right to establish Missionary Districts in those remote Territories; and that, under the present provisions of Article V., the Church in one of those Territories has the same right of admission to the Ecclesiastical Union on acceding to the Constitution, as is now possessed by the Church in a Territory in this country. Of course the probability of such a proceeding may be considered to be at least as remote as the Territories themselves; but the suggestion does not detract from the desirability of the amendment already proposed to Article V., though it furnishes food for thought as to the means of shaping that amendment so as best to promote its efficiency.

Section 2 of Article VI. recognizes the fact that a Diocese may have a larger territorial jurisdiction than it can care for, and that it may become desirable that a part of it should be transferred to the care of General Convention. The territory so transferred would then occupy the same position as territory wherein the Church was not organized as a Diocese; and would be subject to the establishment within it of a Missionary District by the House of Bishops under Section 1. In order to the accomplishment of such a transfer, should it be thought expedient, Section 2 confers the power upon General Convention to accept a cession proposed by a Diocese with the consent of three-fourths of the Parishes in the ceded territory, and of the same proportion of the Parishes in the remaining territory of the Diocese. Provision is made also for the retransfer or retrocession of the territorial jurisdiction when that shall have

appeared expedient; and both the cession and the retro-cession provided for are subject to the same conditions, involving the consent of the Diocese and of the General Convention. The consent of the Diocese to the retro-cession is to be shown by the consent of three-fourths of the Parishes in the ceded territory and also in the remaining territory of the Diocese, since the retro-cession is to be "by such joint action of all the several parties as is herein required for its cession." And both in cession and in retro-cession the action of the General Convention is required to be "by a vote of two-thirds of all the Bishops present and voting," and "by a vote of two-thirds of the House of Deputies voting by orders;" that is to say, by the concurrence of two-thirds of the Dioceses represented by Clergy, with two-thirds of the Dioceses represented by Laity.

By Section 3 it is required that Missionary Districts, established as provided for in the previous part of the Article, shall be organized as may be prescribed by Canon of the General Convention. In whatever form the Missionary work of the Church in such Districts is to be carried on, that form is to be prescribed by Canon of General Convention. The legislative power of the General Convention is thus so extended as to give to it the constitutional right to make due provision for the administration of the working system of the Church in the Missionary Districts.

ARTICLE VII.

PROVINCES.

Article VII. furnishes a constitutional basis for legislation by General Convention in regard to the establishment of Provinces. It does not specify what the Province, in this use of the word, is; what need it is intended to supply; what function it is to perform; nor by what means, or in what manner it is to act. The presumption appears to be, as to the first point, that it is matter of common knowledge; and, as to the others, that information will in due time be given by General Convention. The second of these presumptions is probably correct, though the first perhaps may be open to some doubt. But considering the novelty of this institution as a constitutional feature of our system, and the tremendous possibilities which the introduction of it involves, the thought occurs that something more precise than a remission of the whole subject to the legislature, might naturally have been expected in the Constitution. Three important points, however, are settled by this Article. These are (1) that action of General Convention in this matter has now the basis of a constitutional provision which otherwise it would have lacked; (2) that Missionary Districts as well as Dioceses may be grouped into Provinces, though whether together or separately is presumably left to General Convention to determine; and (3) that no Diocese shall be included in a Province without its own consent. The Article is as follows:

"Dioceses and Missionary Districts may be united into Provinces in such manner, under such conditions, and with such powers as shall be provided by Canon of the General Convention; *provided, however,* that no Diocese shall be included in a Province without its own consent."

The question of the establishment of Provinces is one which has been under discussion among us for about thirty or forty years,

and during that period it has been the subject of a good deal of thought, of many able and learned papers, of frequent debate in General Convention, and of the incubation of important Committees and Commissions. The reasons for its agitation may, perhaps, without disrespect, be described as having been partly sentimental and partly practical.

In the estimation of some, the System of the Church in this country has suffered by comparison with the Systems of the Churches of other countries and other ages; and this sentiment has been cherished in certain quarters apparently without suspicion that the Providence of God and the guidance of His Holy Spirit might have been as effectual in the American System, as in any of the other systems known to Ecclesiastical history; and that there might be a higher ambition for an American Churchman than to assimilate foreign customs instead of acting up to domestic responsibilities.

But apart from the sentimental aspect of the case, the introduction of Provinces has been urged upon practical considerations, founded perhaps chiefly upon the magnitude of the field to be cared for, and the difficulty of making the requisite care effective without some additional machinery for the purpose of bringing the influences of government into closer connection with the work to be carried on, and with the emergencies naturally growing out of it. The things urged as particularly needed, and likely to be thus promoted, have been a more particular subdivision of Dioceses and Districts, an increase in the number of Bishops, a closer association between the various parts of the great jurisdictions, with the attendant development of legislative and judicial functions; involving the introduction of Synodical gatherings intermediate between the Diocesan and the General Convention, and the establishment of a system of Appellate jurisdictions.

As to the means by which these ends were to be attained, there have been two opinions; one, that since the Constitution contained no limitation in this particular of the rights of the Dioceses, it was quite within the power of any Diocese to associate itself with others in the form of a Province; and quite within the power of such association to make legislative or judicial arrangements for itself, provided that these should not contravene the Constitution,

or the Canons of General Convention: the other, that in order to give force and validity to an association which would otherwise rest merely upon the consent of those concerned in it, it was necessary that such association should be constituted by General Convention. Under the influence of the former opinion the Dioceses in the State of Illinois associated themselves into a Province; under the influence of the latter, General Convention provided for the establishment of a Federate Council to be constituted by the Dioceses within the State of New York; designed to satisfy to some extent the craving for Provincial Association—though, in the nature of the case, to a very limited extent. Both of these steps in the Provincial direction were, it will be observed, within State limits, though there have not been wanting plans and projects presented in General Convention for the grouping together of portions of the country irrespective of State boundaries and on what were urged as grounds of practical convenience.

The prevailing opinion being that the matter of Provincial association required the action of General Convention, it is probable that such action would have been taken, except for one consideration; which was that inasmuch as the Constitution had left the power of prescribing the mode of trial of Presbyters and Deacons to the Diocesan Conventions, it was impossible for General Convention to make full legislative provision for the establishment of Appellate Courts, without infringing upon the right of a Diocese to provide a system of appeals for itself, as included within the power to prescribe its own mode of trial. Numerous efforts for the establishment of Appellate Courts by General Convention have been withstood by the bulwark furnished by the old Article 6; and as a Provincial system without the characteristic of Appellate jurisdictions would have been a sort of Hamlet without Hamlet, it was more convenient at least that the establishment of Provinces should be made the subject of a constitutional provision which should go hand in hand with an amendment relating to the judicial function, and devolving the regulation of this, as well as of the matter of Provinces, upon the General Convention.

Such, at any rate, has been the outcome in fact of the protracted process of preparation for the inauguration of a Provincial system. The Constitution in its present amended form has de-

volved upon General Convention the right to provide by Canon both for the establishment of Provinces (Art. VII.) and for the establishment of Courts of Review and Appeal, Art. IX.), and under the operation of these two powers there is nothing to hinder the introduction into our system of all the details and dignities which have ever complicated the administration of Church affairs in East or West, in ancient, medieval, or modern times—nothing, that is to say, but the wisdom of General Convention, upon which, under presupposed Divine guidance, one may doubtless repose in hope and faith. Still, human nature is not perceptibly weaker than it has hitherto been; and human nature being what it is, the processes developed out of the simplicity of the original Provincial system, are not incapable of being reproduced in later times; a very small measure of which reproduction might make the little finger of the administration of the future, thicker than the loins of that of the past.

ARTICLE VIII.

TESTS OF MINISTERIAL CHARACTER AND QUALIFICATIONS.

The character and qualifications of those admitted to the Ministry in any part of the Church, are of common concern to all parts of the Church; and hence a requirement of some test of due preparation for the work of the Ministry, and of some profession of adherence, on the part of those undertaking it, to common standards of Faith and Order, is properly inserted in the Constitution. The propriety of such a requirement has been recognized from the beginning of our System, and its adoption was in effect but the adapting to our practice of a similar custom in the Church of England. The Draft Constitutions of 1785 and 1786, each devoted an article to the subject; and Article 7 of the Constitution of 1789 put the tradition into that form which it has ever since retained until the recent revision. The Article as it now stands, being numbered VIII., is in purpose and general tenor the same as that which preceded it, although it contains certain significant changes. It is proposed to quote the Article by paragraphs, and to note the variations in order. The first paragraph is as follows:

"No person shall be ordered Priest or Deacon until he shall have been examined by the Bishop and two Priests and shall have exhibited such testimonials and other requisites as the Canons in that case provided may direct. No person shall be ordained and consecrated Bishop, or ordered Priest or Deacon, unless at the time, in the presence of the ordaining Bishop or Bishops, he shall subscribe and make the following declaration:"

The language of the former Article was: "No person shall be admitted to Holy Orders until he shall have been examined * * * nor shall any person be ordained until he shall have subscribed the following declaration." This wording was open to the

construction, to which it is believed the usual practice has been conformable, that there was required but one subscription, which was to be made on admission to Holy Orders—that is, at the ordination to the Diaconate. Under the present wording it is made clear that the declaration is to be renewed at the succeeding ordinations to the Priesthood and to the Episcopate. It is further required by the wording of the Article that the Ordinand shall not only at some time previous have subscribed the declaration; but further, that he shall "at the time" of the ordination, "in the presence of the ordaining Bishop or Bishops * * * subscribe and make" the declaration, which is as follows:

"I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline and Worship of the Protestant Episcopal Church in the United States of America."

The declaration as it stood before spoke of "the Holy Scriptures of the Old and New Testament" and promised conformity to the "Doctrines and Worship." In the present statement of it the word Testament is put in the plural as better corresponding with the terms Old and New; and the phrase "Doctrine, Discipline and Worship," is substituted for "Doctrines and Worship." Probably the intent of the former phrase was the same as that of the present; but the present expression is more specific.

The concluding paragraph of the Article is:

"No person ordained by a foreign Bishop, or by a Bishop not in Communion with this Church, shall be permitted to officiate as a Minister of this Church until he shall have complied with the Canon or Canons in that case provided and also shall have subscribed the aforesaid declaration."

According to the Preface to the Ordinal, "No man shall be accounted or taken to be a lawful Bishop, Priest or Deacon in this Church, or suffered to execute any of the said functions, except he be * * * admitted thereunto, according to the Form hereafter following"—which is to be administered by a Bishop or Bishops—"or hath had Episcopal Consecration or Ordination." This, of course, implies that there may be those who, without the use of this particular Form, have been duly ordained by Bishops

possessing a valid Episcopate, and that these have equal capacity for the exercise of their Ministry with such as have been ordained by Bishops with this Form. It is manifest, however, that those ordained by foreign Bishops, or Bishops not in communion with this Church, although they may have the capacity, have not the right to use that capacity in this Church without some special permission therefrom; because many things might have occurred since their ordination in a foreign land or a foreign communion, as to which information would not exist here, and which might make the exercise of their Ministry in this Church not conducive to edification. It is to avoid difficulties such as might thus arise that the Constitution here provides that the admission to the exercise of the Ministry in this Church by those who have been ordained under the circumstances designated, shall be matter of canonical regulation, and shall also be preceded by subscription of the same declaration as is required to be made and subscribed by all persons ordained in this Church.

This paragraph of Article VIII. differs from the corresponding paragraph of Article 7, in respect of a slight verbal alteration, and also in respect of the insertion of the clause, "or by a Bishop not in Communion with this Church," which the former Article did not contain.

ARTICLE IX.

DISCIPLINE OF THE CLERGY.

The discipline of the Clergy, to which the former Article 6 related, is treated of in Article IX. of the present Constitution. Although the process of revision has left but little of the old Article, yet enough remains to connect the two in regard both to the range and distribution of judicial jurisdiction, and to make the history of Article 6, not without value in the effort to appreciate the significance of Article IX.

To be as brief as possible, it needs only to be noted that in a period of one hundred and sixteen years the Constitutional provision on this subject has been four times changed. In the preliminary stage of the Draft Constitutions, it was proposed in 1785, in a form which was amended in 1786. In 1789 it was established in a new form, and as so established continued in force until 1841, when it was put into the shape which it retained until 1901.

In 1785, as Article VIII it read: "Every Clergyman, whether Bishop or Presbyter or Deacon, shall be amenable to the authority of the Convention in the State to which he belongs, so far as relates to suspension or removal from office; and the Convention in each State shall institute rules for their conduct, and an equitable mode of trial."

In reference to this Article, submitted with other matters in connection with an application for Consecration, the Archbishops of Canterbury and York, in a letter to the members of the Convention, laid before that body in 1786 (Bioren, pp. 34, 35.), make the following observations:

"We should be inexcusable, too, if at the time when you are requesting the establishment of Bishops in your Church, we did not strongly represent to you that the *eighth* Article of your Eccle-

siastical Constitution appears to us to be a degradation of the clerical, and still more of the Episcopal character. We persuade ourselves that in your ensuing Convention some alteration will be thought necessary in this Article, before this reaches you; or if not, that due attention will be given to it in consequence of our representation."

The persuasion of the Archbishops was realized, in so far as that before their letter reached the Convention that body had amended the eighth Article by the addition to it of the following sentence:

"And at every trial of a Bishop there shall be one or more of the Episcopal Order present, and none but a Bishop shall pronounce sentence of deposition or degradation from the Ministry on any Clergyman, whether Bishop, or Presbyter, or Deacon." (Bioren, p. 25.)

Further change than this, the Convention apparently thought not required by due attention to the representation of the Archbishops; for, after the reading of the letter, the question whether the Article should remain as already proposed, was unanimously determined in the affirmative. (Bioren, p. 42.)

The subject of Clerical discipline thus came before the General Convention of 1789, with the plain presentation of two suggestions; first, that the Clergy of whatever Order, in any State, were to be amenable to the Convention of the Church in that State; and, secondly, that in the administration of discipline the Episcopate was to be so far recognized as that one or more Bishops should be present at the trial of a Bishop, and that no sentence should in any case be pronounced except by a Bishop; and these suggestions were with some modification adopted.

Another suggestion was presented by the proposed Constitution, which was in part ignored, and in part adopted in 1789; and that was that the Convention in each State should institute rules for the conduct of the Clergy and an equitable mode of trial. The amenability of the Clergy certainly implied that there should be rules for their conduct, and some mode of holding them responsible for the disregard of those rules. But that in a union such as was contemplated there should be different rules in the different States to serve as a basis of their accountability was not desirable;

and probably from the feeling that the grounds upon which a trial might be based should be the same for all the Clergy wherever resident, this part of the suggestion before the Convention of 1789 was not adopted, although that body acted on the suggestion that the State Convention should institute the mode of trial for the Clergy of that State.

Article 6, then, first appears in the Constitution of 1789, in the following words:

"In every State the mode of trying Clergymen shall be instituted by the Convention of the Church therein. At every trial of a Bishop there shall be one or more of the Episcopal Order present; and none but a Bishop shall pronounce sentence of deposition or degradation from the Ministry on any Clergyman, whether Bishop, or Presbyter, or Deacon."

It will be observed that the recognition of the Episcopate in this Article is precisely the same as had been proposed in 1786; and that the position taken with reference to the action of the Convention in the State, while it discarded the unwholesome idea that the clergy were amenable to the Convention in all that related to suspension or removal from office, which might have resulted in direct judicial action on the part of the Convention, nevertheless retained and firmly established the idea that this Convention had the sole power of instituting the mode in which the trial should proceed, which was to hold for the Convention of the Church in the State, as distinguished from the General Convention, or any other authority, the right of legislation on this subject. In this form the Article continued until toward the middle of the nineteenth century, the change of the word State into the word Diocese being made in this as in the other Articles.

By this time, however, the incongruity of leaving the Bishops on the same footing with the other Clergy in this matter, appears to have been realized; and the ideas that there should be guaranteed to a Bishop the same right of trial by his peers as was, in fact, generally possessed by the other Clergy, and that there was a fitness in making the relation of the Bishops to General Convention, correspond with the relation of the other Clergy to the Convention of the Diocese (and possibly other ideas), gained ground. In 1838, on the motion of Bishop Doane of New Jersey, (Journal,

1838, p. 115), an amendment to this Article was proposed, which claimed for the General Convention the right of legislation as to the mode of trying Bishops, leaving the right of the Diocesan Convention untouched in the matter of legislation with regard to the mode of trial of Diocesan Clergy, and which claimed further the right of a Bishop to be tried by a court composed of Bishops only; and this proposal, after the usual submission to the Diocesan Conventions, was ratified and adopted by the Church in the General Convention of 1841; and the article, in the form in which it was then adopted, continued in force until the action taken in 1901. It was as follows:

"The mode of trying Bishops shall be provided by the General Convention. The court appointed for that purpose shall be composed of Bishops only. In every Diocese the mode of trying Presbyters and Deacons may be instituted by the Convention of the Diocese. None but a Bishop shall pronounce sentence of admonition, suspension, or degradation from the Ministry, on any Clergyman, whether Bishop, Presbyter, or Deacon."

In view of its terms and its history this Article establishes two facts; first, that the power to institute the mode of trial of the Presbyters and Deacons in every Diocese, which had by the Constitution been recognized from the beginning as possessed by the Convention of the Diocese, was retained unimpaired by that body; and, secondly, that the power of instituting the mode of trial of a Bishop was abandoned by the Dioceses and vested in General Convention. The Article also establishes certain principles; namely, (1) that the power thus recognized and conferred was strictly and properly a legislative power, and indicated no judicial authority either in the Diocesan or the General Convention, since power to provide or institute a mode of trial is essentially distinct from the power to try; (2) that Bishops were not to be judged except by Bishops; (3) that sentence was in no case to be pronounced on any Clergyman, Bishop, Presbyter or Deacon, except by a Bishop; and (4) that the legislative and judicial functions recognized and conferred by the Article had reference solely to the decision of questions involved in the discipline of the Clergy.

The new Article IX. implicitly assumes the facts above noted, although the distinction of powers resulting from them is expressed in different language; it assumes also the principles involved in the former Article, and it introduces certain new matter. It will be convenient to note these particulars in the consideration of the Article under the three divisions into which it appears to resolve itself, as it relates to (1) Trial Courts, (2) Appellate Courts, and (3) Sentences.

(1) The first two paragraphs are as follows:

"The General Convention may, by Canon, establish a Court for the trial of Bishops, which shall be composed of Bishops only.

"Presbyters and Deacons shall be tried by a Court instituted by the Convention of the Diocese, or by the Ecclesiastical Authority of the Missionary District in which they are canonically resident."

Obviously the distinction between the sphere of action of the General Convention and of the Diocesan Convention declared in the old Article 6, is recognized in these two paragraphs; and the Ecclesiastical Authority of the Missionary District is given the same position relatively as is held by the Diocesan Convention.

Obviously also, the principle is recognized that the power conferred is a legislative power. The recognition is express in the case of General Convention, since it is empowered to act by Canon; and in the other cases the nature of the power is plainly of the same sort, since the same word is used in referring to it, as was used in the former Article in reference to the power there conferred; and since in the next paragraph the General Convention is empowered to act, in reference to another matter, "in like manner," which shows that acting by Canon, or legislative action, was in mind throughout the previous paragraphs.

There is also expressly recognized the principle that in the trial of a Bishop the Court is to be composed only of Bishops. The reason in which this principle is founded is somewhat doubtful. Certainly the principle is asserted, as it was in the former Article 6. But whether it proceeds upon the familiar idea that one has a right to be tried by his peers, or upon the idea that a Bishop ought to be tried by Bishops, because having no superior

he would otherwise have to be tried by his subordinates, is not apparent. If the former idea was in mind, it seems not a little incongruous that no guaranty is furnished to the other Clergy in this matter. A Court for the trial of the subordinate Clergy, one would think, might be required at least to be composed of Presbyters, wherein there would be some approximation to the generally conceded right of equality. But, under the Constitution, nothing hinders either that such a Court should be composed of Bishops or of laymen.

In the comparison of these two paragraphs (which contain the whole Constitutional law in respect to Trial Courts) with the former Article, there appears a very notable difference. The former Article empowered the General Convention to provide "the mode of trying Bishops," and the Diocesan Convention to institute "the mode of trying Presbyters and Deacons." The present Article provides for *the establishment of a Court* for the trial of Bishops, and for the institution *of Courts* for the trial of Presbyters and Deacons. This difference may be considered unimportant and merely accidental; and it may be convenient to assume that the same thing was intended in the present Article, as was intended in the former Article. But certainly so far as language is concerned, the two Articles indicate a difference in the powers conferred. To establish or institute a Court is simply to create a tribunal. The power to provide or institute a mode of trial, while it includes the power to create a tribunal, includes also a great deal more. What the Constitution does in these two paragraphs is to empower the General Convention, the Diocesan Convention, and the Ecclesiastical Authority of a Missionary District, to create tribunals for the trial, respectively, of Bishops, of Presbyters, and of Deacons. And that is all that it does. Once established or instituted those tribunals are, so far as the Constitution is concerned, a law to themselves as to their whole mode of procedure; a condition most extremely undesirable in respect of any Court, but more especially in respect of Courts which have to deal with particular classes or orders of men, and are liable to bias resulting from the professional or clique spirit, as in military, or naval, or clerical trials; and which are in danger of being tempted,

in their desire to maintain the standards affected by those professions, not to be too scrupulous in the matter of means to an end, and in respect to the nature and range of the evidence admitted.

If there is a power elsewhere than in themselves to regulate the procedure of the tribunals whose creation is now authorized, it must be inferred from the power to create the tribunal. It certainly is not expressly conferred by the Constitution. And it is most particularly worthy of observation that if the power of General Convention to regulate the procedure of a Court established by it for the trial of Bishops, is to be inferred from the power to establish such Court, then the power of the Diocesan Convention and the Missionary Ecclesiastical Authority, to regulate the procedure of Courts instituted by them for the trial of Presbyters and Deacons, is equally to be inferred from the power to institute such Courts. Relatively the power is the same in the one case as in the other; and there is no more power to be inferred for General Convention to prescribe rules affecting the procedure of Courts for the trial of Presbyters and Deacons, than there is to be inferred for Diocesan Conventions, and Missionary Ecclesiastical Authorities, to prescribe rules affecting the procedure of Courts for the trial of Bishops.

Indeed, if it may be said without disrespect, it seems worth saying that the new Article IX. is capable of being somewhat improved by amendment, and particularly, or generally, in respect of its failure to provide a much needed constitutional foundation for the legislation of General Convention in regard to the whole subject of discipline. It is to be presumed that no one objects to legislation on that subject by General Convention. On the contrary, there are many departments of the subject that ought to be exclusively legislated upon by General Convention. But surely, in a matter that affects human rights, and interests, and feelings, so profoundly as this, there ought to be some Constitutional foundation for such legislation; a foundation as broad as it might be deemed just and wise to make it, but at any rate sufficiently plain to prevent us from supposing that we live under a system which rests upon nothing but the assumption that all legislation is in

order, whether there is any foundation for it in the Constitution or not. If the amendment or alteration of Article 6 had not proceeded under the dominating influence of the one idea of opening the way for the establishment of Courts of Appeal, it is possible that the relation between the Constitution and the general disciplinary legislation of General Convention would not have been so wholly overlooked. In respect of the authority to establish such Courts, which had been so long claimed and denied, some care has been taken to provide a foundation for the desired legislation.

(2) The third, fourth and fifth paragraphs of Article IX., relating to Appellate Courts, read as follows:

"The General Convention, in like manner, may establish or may provide for the establishment of Courts of Review of the determination of Diocesan or other trial Courts.

"The Court for the review of the determination of the trial Court, on the trial of a Bishop, shall be composed of Bishops only.

"The General Convention, in like manner, may establish an ultimate Court of Appeal, solely for the review of the determination of any Court of Review on questions of doctrine, faith, or worship."

In these paragraphs two kinds of Appellate Courts are provided for: first, for review of determination of Trial Courts, and secondly, for review of determinations of Courts of Review on certain specified questions. The first two paragraphs relate to the establishment of Courts of Review; the third relates to the establishment of an ultimate Court of Appeal.

The action of General Convention in regard to both these kinds of Court is to be taken "in like manner;" an expression which appears to refer to the legislative action called for in the previous paragraphs, and mentioned at the beginning of the Article as being "by Canon." The Constitution then, in the first of these paragraphs now under consideration, empowers General Convention, acting by Canon, to establish Courts of Review of the determination of Diocesan or other trial Courts. The Trial Courts provided for in the first two paragraphs of the Article are for the trial of Bishops, and for the trial of Presbyters and Dea-

cons either in Dioceses or Missionary Districts. A determination reached in any of these Courts is subject to review by a Court established for the purpose by General Convention. If the determination was made by a Court for the trial of Bishops, the Court of Review before which that determination is to come must, like the Trial Court in the same case, be composed of Bishops only. If the determination was made by a Court for the trial of Presbyters and Deacons, the Court for the review of that determination may be composed of Bishops only, or of any or all orders combined. It may be the same Court as is to review the determination in the case of a Bishop, or it may be another Court. Under the Constitution the General Convention is authorized to establish Courts of Review; and, subject to the limitation that Bishops only must review Episcopal determination, General Convention may establish one or many Courts. Whether the establishment referred to is that of a permanent or standing Court or Courts is not definitely stated. But the adjoining words may have some bearing on the question, for the power is not only to establish, but also to "provide for the establishment of Courts of Review." Under this power General Convention may either establish permanent Courts of Review, or provide that in certain cases, or classes of cases, Courts of Review shall be constituted in a certain way. It is to be noted, too, that the power to provide for the establishment of Courts of Review reaches somewhat further. Taken in connection with the power conferred in Article VII. to constitute Provinces, it reaches to the point of authorizing General Convention to provide, in constituting such Provinces, for the establishment in them, and by their action, of Courts of Review to have Appellate jurisdiction over the Trial Courts of the Dioceses or Missionary Districts united in those Provinces.

What powers these Courts are to have is not stated. It seems again to be a case of inference. Since General Convention has power to establish or provide for the establishment of Courts of Review of the determinations of Trial Courts, it may be thought open to inference that General Convention has power to determine what power a Court of Review shall have; whether to review simply, which would seem to be needless; or to reverse or correct the determination of the Court below; to render a new decision

accordingly, or to send back the case reviewed for a new trial; and whether, and how many times, the process may be repeated. These are points certainly which still need to be determined.

It has been noted above as a principle involved in the former Article 6, and assumed by the present Article IX., that the legislative and judicial functions recognized and conferred relate solely to the decision of questions involved in the discipline of the Clergy. No power is recognized by the Constitution either in General or Diocesan Convention, or in Missionary Ecclesiastical Authority, to establish or institute Courts for the determination of—and no power given to Courts to determine—any manner of questions, except such as are involved in and dependent upon the action for which in a particular case a Clergyman, whether Bishop, Presbyter or Deacon, is put upon trial.

It is apparent that in such particular case there are, or may be, two classes of matters to be determined. First, matters of fact; and, secondly, matters of law. The matter of fact to be determined is whether the Clergyman did or did not act in the way charged; and here it is to be remembered that, as the Clergy are commissioned to teach, teaching—whether by formal and public discourse, or by informal and personal communication—is action. The matter of law to be determined is whether the action charged was contrary to those principles of *doctrine* (which presumably includes morals), *faith*, or *order*, which the Church has declared itself to have received in trust to administer; or to those rules which the Church has lawfully enacted in the exercise of its proper authority—to all of which principles and rules the Clergyman, by his continued membership and tenure of office in the Church, is presumed to have consented; and for conformity to which he is therefore under obligation.

Both of these kinds of determination may be required to be given in the Trial Court, and the Court of Review provided for in the third paragraph of Article IX. has power to review the whole determination as to both matter of fact and matter of law; and no appeal lies to any higher Court as to the matter of fact; nor as to the matter of law, except as to questions of certain specified kinds. If the question is raised in the Trial Court, whether the

action charged as matter of fact is, as matter of law, contrary to the faith which the Church has received; or to the doctrine, or specific teaching which the Church has founded upon that faith; or to the order of worship, which the Church has authorized for the use and benefit of those who hold that faith and doctrine, the determination of the Trial Court on that question may be submitted to the Court of Review, and the determination of the Court of Review thereupon, may be subjected to the further review of what is called in the fifth paragraph of Article IX. an ultimate Court of Appeal.

This Court the General Convention is empowered to establish by Canon, and no limitation is imposed as to the composition of the Court, or as to its permanence, or its procedure. It is a Court of Appeal from determinations of Courts of Review; it is not a Court of Appeal from all those determinations, but only from such of them as are specifically designated; and as to these it is the ultimate Court of Appeal.

(3) The remaining two paragraphs of Article IX. have reference to Sentences. The paragraphs read as follows:

"None but a Bishop shall pronounce sentence of admonition, or of suspension, deposition or degradation from the Ministry, on any Bishop, Presbyter or Deacon.

"A sentence of suspension shall specify on what terms or conditions and at what time the suspension shall cease."

The former of these two paragraphs will be recognized as a survival from 1841, and traceable in part back to 1789. But the present paragraph adds the word "deposition," which in 1841 does not appear; and thereby gives a suggestion of four kinds of sentence, whereas there are but three intended—(1) admonition, (2) suspension, and (3) one which is commonly described by either of two terms, deposition or degradation. There is really no difference in the meaning of these two terms; each of which contemplates a removal or displacement from the grade or position of the Ministry. But deposition has a milder sound than degradation, which in popular acceptation carries with it the idea of moral turpitude; and since it is canonically possible for a man to be displaced from the Ministry at his own request, for reasons not

affecting his moral character, the use of the milder word has sometimes been preferred. The point of the provision is, that of the three sentences known to the Church in the discipline of the Clergy, none is to be pronounced on any Clergyman, Bishop, Presbyter or Deacon, except by a Bishop.

The last paragraph is derived into the Constitution from a previous Canonical provision, which prohibited a sentence of indefinite suspension from the Ministry. (Title II., Canon 10.)

Indefinite suspension is an expression which seems to involve a contradiction in terms; and such a suspension is practically equivalent to deposition. It is hardly conceivable that such a sentence would be rendered by any except an arbitrary, irresponsible and despotic power, which might perhaps suspend during its pleasure with a view to restoration or no restoration, as might be conceived desirable. However, since such sentence had in fact been rendered by an Episcopal Tribunal in two cases (and did, in fact, in one case, continue in force for seventeen years, being then terminated by death), the persuasion that the repetition of that kind of discipline was unsafe and undesirable, led to the adoption of a prohibitory Canon. The provision of the Canon requires a sentence of suspension thereafter, to "specify on what terms, *or* at what time, said penalty shall cease." The provision of the amended Constitution is that such sentence "shall specify on what terms or conditions *and* at what time the suspension shall cease."

As the Constitution in this case is the copy, and the Canon the original, and as the alternative of the Canon seems more reasonable than the conjunction of events required by the Constitution, one is led to suppose that the word *and* in the Constitution has been inadvertently substituted for the word *or*, formerly used.

ARTICLE X.

THE BOOK OF COMMON PRAYER.

The Book of Common Prayer as established in the Church of England was, of course, in use by the members of that Church in the Colonies. When, after the Revolutionary War, those Colonies had become independent States, the members of that Church which had been the Church of England in the Colonies, naturally continued the use of the same Book as part of the privilege of their common inheritance. They were, however, of necessity obliged to seek some alteration of the Book to adapt it to the different circumstances in which they found themselves, owing to the change in their civil relations; and while this was on all hands acknowledged to be necessary, it was the feeling of some that it would be well that opportunity should be taken to make other changes than those which the civil conditions suggested; and changes of both these kinds were proposed in different quarters, and to some extent acted upon in the period between the recognition of the independence of the States and the authoritative establishment of the Book of Common Prayer under the Ecclesiastical Constitution in 1789.

In Connecticut, where, since 1784, there had been a complete Church, which was not among the number of those which were in process of association under a common Constitution, the matter of needful changes in the Prayer Book came under consideration at a Convocation held on the second of August, 1785; and certain alterations required by the change in civil conditions were authorized in a Pastoral letter of Bishop Seabury, dated on the 14th of that month, and based upon the ground that "It having pleased Almighty God that the late *British* Colony of Connecticut should become a free, sovereign and independent State, as it now is, some alterations in the Liturgy and offices of our Church are necessary to be made, to accommodate them to the civil Constitution of the country in which we live."

At a later session of this Convocation, in September, 1786, Bishop Seabury set forth as "recommended to the Episcopal Congregations in Connecticut," a Liturgy, or Communion Office, which differed in important respects from that of the English Liturgy of that day, having been adapted from the Scottish Office derived from the Book of Common Prayer as it had been at first established after the Reformation in England. (See Dr. Hart's Reprint of Bp. Seabury's Communion Office, Ed. 1883.)

Intermediate between these two promulgations, Article IX. of the proposed Constitution of 1785 provided that, corresponding to the representation of a desire for further alterations of the Liturgy than those made necessary by the American Revolution, the English Book as changed in accordance with alterations then proposed and recommended to the Protestant Episcopal Church in the United States of America "shall be used in this Church when the same shall have been ratified by the Conventions which have respectively sent Deputies to this Convention." (Bioren, pp. 8, 9.)

Article IX. of the proposed Constitution of 1786, professing the same reason for action on the subject, and referring to the Prayer Book "as revised and proposed to the use of the Protestant Episcopal Church, at a Convention of the said Church in the States of New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia and South Carolina," provides that this Book "may be used by the Church in such of the States as have adopted or may adopt the same in their particular Conventions, till further provision is made, in this case, by the first General Convention, which shall assemble with sufficient power to ratify a Book of Common Prayer for the Church in these States." (Bioren, p. 25.)

Such further provision was made in the General Convention of 1789, after the Deputies from those States had assembled with full powers of ratification (Bioren, p. 48); and after representatives from the Churches in Connecticut, Massachusetts and New Hampshire had united with them in the adoption of the Constitution. (Bioren, p. 74.) The Article by which such provision was made appears in the Constitution of that year as Article 8, and is as follows:

"A Book of Common Prayer, administration of the Sacraments, and other rites and ceremonies of the Church, articles of religion, and a form and manner of making, ordaining and consecrating Bishops, Priests and Deacons, when established by this or a future General Convention, shall be used in the Protestant Episcopal Church in those States which shall have adopted this Constitution."

Under the authority conferred by this Article of the Constitution, the work of revision of the English Book of Common Prayer, with a view to its adaptation for use in the Protestant Episcopal Church in the States adopting the Constitution, was taken up anew in October, 1789, and carried to a successful issue, with the joint concurrence of the two Houses, then for the first time in separate session; although some work was, under the terms of the Article, postponed to a future General Convention.

It will be observed that this Article distinguishes between the Book of Common Prayer and certain adjuncts which are commonly associated with it, though not in a proper sense a part of it; and also that the object of the Article was only to provide for the establishment of this Book and its adjuncts, no longer as a proposal, to be used or disused at pleasure, but as authoritatively imposed upon all the Churches associated under the Constitution. It was natural that the Constitution at this time should content itself with such authoritative establishment, and should take no thought for the morrow of projected amendments: and the provision thus made sufficed until 1811; when, by the usual process, an amendment was made authorizing alterations, or at least prescribing a mode in which they could be constitutionally accomplished. That amendment (Bioren, p. 271) adds to the Article as adopted in 1789, the following sentence:

"No alteration or addition shall be made in the Book of Common Prayer, or other offices of the Church, unless the same shall be proposed in one General Convention, and by a resolve thereof made known to the Convention of every Diocese or State, and adopted at the subsequent General Convention."

In this sentence was included in 1829, after the words, "Offices of the Church," the words, "or the Articles of Religion;" and, ex-

cepting the change of 1838 regarding the use of the word Diocese instead of State, no further amendment was made until 1877, when the following third sentence was added:

"*Provided, however,* That the General Convention shall have power, from time to time, to amend the Lectionary; but no act for this purpose shall be valid which is not voted for by a majority of the whole number of Bishops entitled to seats in the House of Bishops, and by a majority of all the Dioceses entitled to representation in the House of Deputies."

Composed of these three sentences, amended as indicated, Article 8 continued until the recent revision resulting in Article X. of the Constitution of 1901. The three sentences adopted at the times noted, each marked a distinct step. First, there was the provision of authoritative establishment in the Churches associated under the Constitution; secondly, there was the provision for alteration, and the guarding of it by the requirement of approving action in two successive sessions of General Convention, with an intermediate communication to the Diocesan Conventions; and, thirdly, there was the gift of power to General Convention to amend the Lectionary or order for the public reading of Holy Scripture, "from time to time;" that is, at any session, without communication to the Dioceses, and without need of subsequent ratification; but in the exercise of this power the General Convention was to act by a particularly specified concurrent majority; namely, that of all the Bishops entitled to seats in the House of Bishops, and that of all the Dioceses entitled to representation in the House of Deputies. Under this provision a majority of the Bishops attending would not suffice, unless it were a majority of all the Bishops entitled to seats in the House; and the majority in the House of Deputies was to be not a numerical majority, nor even a majority of all Dioceses represented by Clergy, concurring with a majority of all Dioceses represented by Laity, but a majority of all the Dioceses entitled to representation in the House of Deputies; which involved the concurrence of the Clergy and Laity in each one of that number of Dioceses which constituted the majority of the whole number of Dioceses entitled to representation.

Into the room of this Article 8 has now succeeded Article X. of the Constitution as amended in 1901, importing several changes. But since Article X. follows the lines of the former Article 8 in its structure, it may perhaps simplify our task somewhat if we reproduce separately each of the three sentences of which it is composed, and note in each sentence the difference between the new and the old. The first sentence of Article X. is as follows:

"The Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church, together with the Psalter or Psalms of David, the form and manner of making, ordaining and consecrating Bishops, Priests and Deacons, the form of Consecration of a Church or Chapel, the Office of Institution of Ministers, and Articles of Religion, as now established or hereafter amended by the authority of this Church, shall be in use in all the Dioceses and Missionary Districts of this Church."

Beside the more detailed specification of the adjuncts to the Book of Common Prayer, which needs no comment, the notable changes here presented are in the terms of imposition; and these are, perhaps, changes in terms, rather than in substance of requirement. At least the present provision seems to require for the Church as it is now, substantially what this part of the old Article at the time of its adoption required for the Church as it was then. The phrase, *The Book of Common Prayer, etc., when established by this or a future General Convention,* is well replaced at this date by the phrase, *The Book of Common Prayer, etc., as now established or hereafter amended by the authority of this Church.* And the requirement that such Book, etc., "shall be in use in all the Dioceses and Missionary Districts of this Church," seems to be, in this day, the proper equivalent for the old requirement, "shall be used in the Protestant Episcopal Church in those Dioceses which shall have adopted this Constitution," since there are now, in that sense of the word, no Dioceses except such as have acceded to the Constitution; and since the Protestant Episcopal Church does no longer exist in any State or Territory or foreign land except in a form dependent upon the authority of those Dioceses as associated under that Constitution. No other change seems to be

introduced here, unless there be some possible technical distinction between "shall be used" and "shall be in use," the latter expression being perhaps of a wider significance, as denoting that which would be liturgically described as "the use" of the Church, although probably that was what was intended by the expression originally adopted.

The second sentence of Article X. is in the following language:

"No alteration thereof or addition thereto shall be made unless the same shall be first proposed in one triennial meeting of the General Convention, and by a resolve thereof be sent within six months to the Secretary of the Convention of every Diocese, to be made known to the Diocesan Convention at its next meeting, and be adopted by the General Convention at its next succeeding triennial meeting by a majority of the whole number of Bishops entitled to vote in the House of Bishops, and by a majority of the Clerical and Lay Deputies of all the Dioceses entitled to representation in the House of Deputies voting by orders."

The changes here introduced are, first, in the way of abbreviation, the words "thereof" and "thereto" being used to save the repetition of description contained in the former Article 8; secondly, in the way of precision, the requirement that the proposed amendment be "made known to the Convention of every Diocese," being replaced by the requirement that the resolution embodying the proposed amendment "be sent within six months to the Secretary of the Convention of every Diocese, to be made known to the Diocesan Convention at its next meeting;" and, thirdly, in respect to the vote by which the action of General Convention in the premises shall be expressed.

In the former Article 8 no requirement was made as to the vote to be taken either upon the resolve to make the original proposal known to the Dioceses, or upon the final adoption. By consequence that vote might in either case be taken in the House of Deputies by acclamation, unless, under the former Article 2, on the requirement of the Clerical or Lay representation from any Diocese, the vote by Dioceses and Orders should become necessary. As the case stands at present no particular mode of voting

is required in the House of Deputies in regard to the initiatory action in General Convention; and, therefore, the vote upon the "resolve" to give notice of a proposed amendment is regulated in that House by the general provisions of the present Article I. (Sec. 4, paragraph third); that is the vote of the majority of the Deputies present suffices, unless the Clerical or Lay representation of any Diocese require "that the vote be taken by orders;" and in the other House a majority of the quorum present determines the vote. In regard, however, to the final action of adoption at the next succeeding triennial session of General Convention the nature of the vote required in both Houses is distinctly specified in Article X.; and in order to constitute such action there is necessary in the House of Bishops the vote of "a majority of the whole number of Bishops entitled to vote in the House of Bishops;" and, in the House of Deputies, the vote of "a majority of the Clerical and Lay Deputies of all the Dioceses entitled to representation in the House of Deputies voting by orders;" which means that the majority is not simply the majority of a quorum present, but that of the Clerical and Lay Deputies of all the Dioceses entitled to representation; and which means further that the vote of the Clerical Deputies of a majority of the Dioceses entitled to representation must concur with the vote of the Lay Deputies of a majority of the Dioceses entitled to representation.

The requirement of Article I., Sec. 4, par. 3d, is that "in all cases of a vote by orders, the two orders shall vote separately, each Diocese having one vote in the Clerical order and one in the Lay order; and the concurrence of the votes of the two orders, by not less than a majority in each order of all the Dioceses represented in that order at the time of the vote, shall be necessary to constitute a vote of the House." This, of course, applies primarily to the vote by orders taken to ascertain the consent of the majority of the quorum present, because ordinarily that consent is all that is needed or desired; but when the Constitution requires the vote by orders to be taken for the purpose of ascertaining the consent of the majority of the Clerical and Lay Deputies of all the Dioceses entitled to representation, then there must be represented at the time of the vote, in each order, a majority of Dioceses entitled to

representation; for, the "majority in each order of all the Dioceses represented in that order at the time of the vote," would not be the vote required unless the Dioceses represented in the vote constituted a majority in each order of all the Dioceses entitled to representation.

It is necessary to bear in mind in all questions arising under the provision for this "vote by orders" (as indeed is the case where any specified majority is required), that a measure fails of adoption unless that particular majority is obtained which is applicable to that measure. The Constitution in the case of an amendment to the Prayer Book requires that the vote which is to adopt it in the House of Deputies must be the vote by orders; and it also requires that the vote by orders in this particular case shall carry the consent of the majority of the Clerical Deputies of all Dioceses entitled to representation, concurring with the consent of the majority of Lay Deputies of all Dioceses entitled to representation—such majority in each order being, of course, the majority of Dioceses in each order. This is the requirement of a larger vote than is ordinarily called for under the provisions of Article I.; but it would be impossible, "voting by orders," to secure the concurrent consent required in Article X., unless the "majority in each order of all the Dioceses represented in that order at the time of the vote" were equal to the majority in each order of all the Dioceses entitled to representation, which is the thing required by the phrase, "a majority of the Clerical and Lay Deputies of all the Dioceses entitled to representation in the House of Deputies voting by orders."

The third sentence of Article X. is, with two or three exceptions, identical with the third sentence of the former Article 7, and reads as follows:

"*Provided, however*, That the General Convention at any meeting shall have power to amend the Tables of Lessons by a majority of the whole number of Bishops entitled to vote in the House of Bishops, and by a majority of the Clerical and Lay Deputies of all the Dioceses entitled to representation in the House of Deputies voting by orders."

The first two differences to be noted are apparently verbal; the

present words, "at any meeting" being equivalent to the former words, "from time to time;" and the present words, "Tables of Lessons," being no doubt intended to be equivalent to the former word "Lectionary;" though whether the assignment of portions of the Psalter is as well covered by the term "Tables of Lessons," as it was covered by the term "Lectionary" is perhaps a fair question.

The other difference, however, is more than verbal, as the present Article requires precisely the same kind of vote in the case of an amendment of the Tables of Lessons at any meeting, as is required in case of the final adoption of any other amendment to the Book of Common Prayer, which has been particularly described in the comment upon the foregoing sentence; whereas the requirement of the former Article 8, as to the majority needed in the House of Deputies, was that it should be "a majority of all the Dioceses entitled to representation" in that House.

This is a substantial alteration, and requires particular attention, because, as before pointed out, the "vote by orders" as defined in the present Constitution is not (any more than was the same vote under the former Constitution) necessarily identical with the vote of a majority of the Dioceses. The consent given through the vote by orders may involve in fact the consent of the majority of the Dioceses; because in a majority of the Dioceses each of the Dioceses composing that majority may cast its votes. Clerical and Lay, on the same side; but as no Diocese is obliged by the Constitution to do this in a "vote by orders," it is obvious that the concurrent majority may consist, in that vote, of a majority of Dioceses voting aye by their Clergy, and of a majority of Dioceses voting aye by their Laity, and yet these majorities might come almost wholly from different Dioceses. In a supposed case of thirteen Dioceses, those numbered from one to seven inclusive might vote aye by their Clergy, and those numbered from seven to thirteen inclusive might vote aye by their Laity, and in a "vote by orders," the measure with that showing would be adopted; and yet the Diocese numbered seven would be the only one of the thirteen in which the Diocese would have cast both of its votes, Clerical and Lay, on the same side: whereas if the vote required

were the vote of a majority of the Dioceses, seven Dioceses out of the thirteen in the supposed case would have had to vote aye both by their Clergy and by their Laity. In ordinary cases, and unless there is some special reason for requiring the vote of a majority of the Dioceses, the distinction is perhaps of no material importance; but since the distinction exists it is important to understand it.

In concluding the comment upon Article X. it may be useful to remark that a proposed amendment, adding another sentence to the Article, is to come up for adoption in 1904, at the next triennial meeting of General Convention. The sentence which it is proposed to add (Journal of 1901, app. XVI., p. 573), reads as follows:

"And *provided further*, that nothing in this Article shall be construed as restricting the authority of the Bishops of this Church to take such order as may be permitted by the Rubrics of the Book of Common Prayer or by the Canons of the General Convention for the use of special forms of worship."

It is difficult to see how Article X. as it stands can restrict the Bishops from doing what they are permitted to do by the Rubrics of the Book of Common Prayer. Article X. establishes the Book, Rubrics included; and any permission in regard to the use of special forms of worship which the Rubrics may now contain or may hereafter be so amended as to express, are constitutionally authorized by Article X.; and there could be no possible construction of that Article which would restrict the authority of the Bishops to avail themselves of such permission.

With regard to Canons, the case is different; for Canonical permission or authorization for the Bishops to take order for the use of special forms of worship, might be questioned on the ground that the legislature had no Constitutional power to prescribe, or authorize the Bishops to provide special forms of worship, when the whole subject of forms of worship for use in the Church had been settled by the Constitutional establishment of the Prayer Book. The proposed amendment may, therefore, mean that if Canons of the General Convention permit the Bishops to take order for the use of special forms of worship the Bishops are to be considered as having Constitutional right to avail themselves

of such permission. In other words, according to this proposed amendment the Constitution establishes a general form of worship in the Book of Common Prayer to be in use throughout the Church; and at the same time authorizes the Bishops to provide special forms of worship, additional to, and possibly in substitution for, those of the Prayer Book, if the Canons permit; which practically relegates the whole subject of forms of worship to the action of General Convention, notwithstanding the provisions of the Constitution.

Before this proposed addition is adopted, it will no doubt be understood by those who are commissioned to act upon it; and it behooves one not fully instructed in regard to its intent, to speak with caution concerning it. But the observation may, perhaps, with all respect, be hazarded, that if it be desired to lodge in General Convention the power to pass Canons permitting the Bishops to take order for the use of special forms of worship, it may be well that the Constitution in some way define the nature of the occasions for the use of such special forms. *Dolus latet in generalibus* is an aphorism that applies as well in Constitutional law as in logic. A general recognition of the right of the Bishops to take such order for the use of special forms of worship as any Canon of General Convention may permit, opens a door to possibilities in regard to forms of worship which has heretofore been understood to be closed by the Constitutional establishment of a COMMON form.

ARTICLE XI.

CONSTITUTIONAL AMENDMENT.

It is a satisfaction to reflect, as we approach the end of our pilgrimage, that so much attention has already been paid to the nature of the "vote by orders," and the distinction between that vote and the action of the Church in a majority of the Dioceses, that there is little need to enlarge upon these points at this stage of the journey; since the introduction into Article XI. of an application of the vote by orders is the chief feature of the difference between that Article and the former Article 9, which also dealt with the subject of amendments to the Constitution.

The significance of that change, however, requires some attention; and besides, the whole Article has been re-cast: and, even as to the same provisions, is expressed in different language; and if the Article has, like some others, its roots in the past, it will be well to trace its origin and development.

The proposed Constitutions of 1785 and 1786 each concluded with an Article, numbered XI., relating to the obligation of the Constitution when established. There was no need, in instruments not yet adopted, to make provision for amendments, and, of course, the questions which had to be met were not as to amendments, but were whether a Constitution could be adopted at all; and what, if it were adopted, would be the relation to it of the Church existing in the States; and these questions seem to have been in mind in the framing of the Articles mentioned.

That of 1785 reads:

"This General Ecclesiastical Constitution, when ratified by the Church in the different States, shall be considered as fundamental; and shall be unalterable by the Convention of the Church in any State."

That of 1786 reads:

"The Constitution of the Protestant Episcopal Church in the

United States of America, when ratified by the Church in a majority of the States assembled in General Convention, with sufficient power for the purpose of such ratification, shall be unalterable by the Convention of any State, which hath been represented at the time of such ratification."

The latter of these two Articles was adopted in amendment of, or in substitution for, the former, on the 23d day of June, 1786. Like that for which it was substituted, it awaits ratification, and is put forth as a recommendation. But unlike that of 1785, this Article contemplates, and is proposed to be submitted for, ratification "by the Church in a majority of the States assembled in General Convention, with sufficient power for the purpose of such ratification." The former process had been for the Deputies to recommend, and submit their recommendations to the acceptance or rejection of the States from which they had come. But, after trying this process, the conclusion appears to have been reached that, as Bishop White somewhere says, it was idle to bring gentlemen together from so great distances for the accomplishment of so inconclusive a business. And, therefore, the plan adopted in 1786 was to mature the proposals as far as possible, and then ask the constituencies to send Deputies who would not have to be content with recommendations, but who would be empowered to bind their constituents by their action; and this Article is so drawn as to give the perfectly fair notice to the Churches in the States that if they empowered their Deputies to consent to the adoption of a Constitution, and if such Constitution should be "ratified by the Church in a majority of the States assembled in General Convention with sufficient power for the purpose of such ratification," then no Convention of a particular State which had been represented at the time of such ratification should have any power to make alterations in that Constitution.

Correspondent to this action a resolution was adopted on the following day recommending the Conventions in the States represented to authorize and empower their Deputies to the next General Convention to confirm and ratify a general Constitution respecting both the doctrine and the discipline of the Church; and the Deputies at the General Convention of 1789, being called upon

to declare their powers relative to the object of this resolution, gave information of their full authority. (Bioren, pp. 26, 48.)

In the execution of this authority the Constitution of 1789 was adopted and ratified; and its ninth and concluding Article prescribed the mode by which only it could be altered. The Article was as follows:

"This Constitution shall be unalterable unless in General Convention, by the church in a majority of the states which may have adopted the same: and all alterations shall be first proposed in one General Convention, and made known to the several state Conventions before they shall be finally agreed to, or ratified, in the ensuing General Convention."

The ideas underlying this Article, and plainly derived from the proposal of 1786, were that the factor in the establishment of the Constitution was the Church in the States represented, and that the sphere of operation of that factor was the General Convention. The Church in a majority of the States acted, according to the terms on which the Deputies assembled, to the obligation of all the States represented; but such action could only be taken in General Convention by the Deputies appointed and authorized for the purpose. And these ideas, Article 9, of 1789, applied to the process of alteration, as they had before been applied to the process of adoption. The Constitution was declared to be unalterable except by the power and in the mode of its adoption; that is to say, by the Church in a majority of the States which had adopted it; and in General Convention. These principles being declared, the Article provided further safeguards, requiring that the alteration in order to be accomplished, must be first proposed in one General Convention, then made known to the several State Conventions, and then finally agreed to, or ratified, in the ensuing General Convention.

In this form, except for the recognition of Dioceses as occupying the position formerly held by States, and except also for one or two unauthorized changes in punctuation, Article 9 continued until the session of 1901; and under its sanction, and in intended compliance with its provisions, all the amendments which have been made in the Constitution have been adopted. Article XI.,

which has replaced it in the present Constitution, reads as follows:

"No alteration or amendment of this Constitution shall be made unless the same shall be first proposed at one triennial meeting of the General Convention, and by a resolve thereof be sent to the Secretary of the Convention of every Diocese, to be made known to the Diocesan Convention at its next meeting, and be adopted by the General Convention at its next succeeding triennial meeting by a majority of the whole number of Bishops entitled to vote in the House of Bishops, and by a majority of the Clerical and Lay Deputies of all the Dioceses entitled to representation in the House of Deputies voting by orders."

The first observation which occurs upon the perusal of this Article is that it is almost a verbatim repetition of the second sentence of Article X., relating to amendments to the Book of Common Prayer. Except that one refers to amendments to the Prayer Book and its adjuncts, and the other refers to amendments to the Constitution, there is little difference between the two, and such differences as there are appear to be inadvertencies; such as the proposal being made *in* one triennial meeting in one case, and *at* one triennial meeting in the other case; and that the proposal is to be sent to the Secretary of the Convention of every Diocese within six months in one case, whereas no time is specified for the sending in the other case: which latter difference is unfortunate, whether or not it were an inadvertence, as the general fidelity of the copy leads one to assume that it was.

But in the main the provisions are the same; the proposal, the resolve directing that the proposal be sent to the Secretary of the Convention of every diocese, the making known to the Convention of every Diocese at its next meeting (presumably the next after the triennial meeting at which it was made), and the final adoption at the next triennial meeting, are steps essential to amendment of each kind, according to the Constitutional requirements. And the same correspondence is apparent in respect of the requirement as to the vote by which is expressed the action of the power by which the amendment is made in each case, and as to the sphere in which that power is to act.

In regard to Prayer Book amendments there has been some increase in the strictness of the requirement as to the vote by which the Church expresses itself in General Convention. Article X. calling for a concurrent majority of Clerical and Lay representations of all Dioceses entitled to be represented, and for a majority of the whole number of Bishops entitled to vote. In regard to Constitutional amendments there has been some relaxation in strictness, the Church allowing the expression of its will as to such amendments, in the House of Deputies by a concurrent majority of Clerical and Lay representations of all Dioceses entitled to be represented (which is a vote easier to obtain than that of a majority of Dioceses entitled to representation); and, in the House of Bishops, by a majority of all Bishops entitled to vote (which is on the other hand harder to obtain than the Episcopal majority formerly effective). These changes appear to tend toward an equality in the requirement as to alterations in the Book and in the Constitution which did not exist before, but which the present amendment seems to have intended to establish. This equalization is a new feature, and deserves attention as such, since it is not to be assumed that there is no reason for putting the Prayer Book and the Constitution on the same footing in this particular, because it has not hitherto been done.

It is a question not without interest, and not altogether easy to determine, whether the acts in establishment and amendment of the Book of Common Prayer are legislative, or Constitutional in their character; nor is the question merely speculative, and without practical bearing. On the one hand it is to be said that the Book was originally established by General Convention in 1789, in the exercise of the powers bestowed upon it by Article 8 of the Constitution already adopted in that year; and that the Book has been since at different times amended under the sanction of the amendment of that Article of the Constitution in 1811. This certainly affords strong ground for the claim that the power to establish and amend the Book is a legislative power conferred upon General Convention by the Constitution in Article 8. And this ground appears to be further strengthened by the consideration that in that Article 8 the mode in which the power was to be

exercised was not determined; and no distinction was made between the mode of the exercise of that power, and the mode of the exercise of the legislative power in any other direction. It is true that the action required for amendment (although not the action required for original establishment), was to be taken in two successive sessions of General Convention, with an intermediate reference to the Dioceses; but that provision by itself would hardly overthrow the idea that the action was legislative action, so long as the vote required to determine that action was the same as that required for legislative action, and was clearly distinguishable from that required in Article 9, for action in amendment of the Constitution.

On the other hand it is to be said that the Book was intrinsecally as much a part of the fundamental or organic law which furnished the basis for the association of the Church in the States or Dioceses, as was any Article of the Constitution provided for that purpose; the basis of a common faith, and a common rule of worship, being essentially as fundamental in an Ecclesiastical Association as the basis of a common order of administration could be in a civil association. And another point to be noted is that under the recommendation of 1786, the compliance with which brought together in 1789 Deputies empowered to bind their constituents, the power was described as for the ratification of a general Constitution respecting both the doctrine and the discipline of the Church; and it is hardly to be doubted that that power authorized the establishment by that Convention of the Book, as well as of the several Articles which were grouped under the term Constitution. If the members of that Convention had proceeded to establish the Book first, and the Constitution afterwards, it could not have been said that they were acting beyond the power conferred upon them to ratify a general Constitution respecting both the doctrine and the discipline of the Church, nor could it fairly have been denied that the Book was, practically, as much a part of the Constitution as were the several Articles grouped under that specific name.

In point of fact, however, this course was not followed; and although the power of the Deputies to the Convention of 1789 be

allowed to have included the power to establish the Book, they did not see fit to exercise their power in that way; but chose (what seems to have been the more orderly way), the course of embodying in the Constitution which they adopted, an Article covering the establishment of the Book, and providing in that Article the Constitutional basis for their own future action, or that of their successors, if they themselves should not be able to accomplish the end proposed. Having done this, it is a reasonable deduction that the power conferred upon them to that end was exhausted by that action; and that henceforth, action taken in reference to the eslishment of the Book, was action taken under the authority derived from theArticle of the Constitution, and not from their original deputation which they had entirely fulfilled in the adoption of that Article.

It is worth a moment's pause in this discussion, to observe the estimate which the members of that Convention put upon their own action.

The first seven articles of the Constitution were adopted in the early part of the session of August, 1789; and the last two were laid over to a future day, the Convention being not at the same time ready to act upon them. These two were Article 8 on the establishment of the Book, and Article 9 on alterations of the Constitution, which were both adopted at a later day in the same session. But in adopting the first seven Articles, in which were included those which devolved legislative powers upon the Convention, the resolution of adoption formally expresses the relation of the acts of the Convention to the Articles adopted. A committee having been appointed to consider the proposed Constitution of 1786, and to recommend alterations, and having reported a Constitution accordingly, it was "Resolved that the first, second, fourth, fifth, sixth, seventh and eighth Articles be adopted, and stand in this order, 1, 2, 3, 4, 5, 6, 7; that they be a rule of conduct for this Convention; and that the remaining articles be postponed for the future consideration of this Convention." (Bioren, p. 52.)

If then, the Convention understood and resolved that these seven Articles were the rule of conduct of the Convention in respect to all action covered by them, there seems no escape from the conclusion that Article 8, when it was adopted at the later

convenience of the body (Bioren, p. 60), became a rule of conduct for the Convention in regard to action covered by that Article; so that action taken still later by the same Convention in the establishment of the Book (October, 1789), was action taken under what, being embodied in the Constitution, had become a rule of conduct for that body in that matter.

These considerations indicate most plainly that the action taken by the Convention in the establishment of the Book of Common Prayer was in the proper sense legislative action, as being dependent upon constitutional action previously taken and specifically authorizing the promulgation of rules to be obeyed on certain subjects by the Clergy and people of the Church. And if the act of establishment of the Book was legislative, as distinguished from constitutional, then necessarily acts of amendment to the Book, when authorized by amendment of the Constitution, were in like manner legislative and not constitutional in their character. Nor can it be regarded as other than a simply reasonable conclusion, that the Convention of 1811, which first made provision for amendments, did what it intended to do when it left such provision to be carried out precisely in the manner in which all legislative action was to be carried out, and refrained from requiring that it should be carried out in the way in which constitutional action, or action in amendment of the Constitution was required to be carried out. Neither in 1811, nor for nearly a century afterwards, does it appear to have occurred to General Convention that the vote determining its action in regard to amendments to the Book, should be taken in any other way than that provided in the old Article 2, which was applicable to all legislative action, and was known as the vote by Dioceses and Orders, as distinguished from the action in General Convention of the Church in a majority of Dioceses called for by Article 9, in alteration of the Constitution.

These things being so, the significance of the change accomplished by the Church in substituting the provisions of the present Articles X and XI, for those of the former Articles 8 and 9; and in promoting amendments to the Book of Common Prayer from the grade of legislative action to that of constitutional action, by prescribing precisely the same sanctions for both, furnishes food for reflection.

With regard to the change in the character of amendments to the Prayer Book, and the placing of them in the same position with amendments to the Constitution, as the purpose of the act seems perfectly clear, so it seems also clear that nothing can be inferred from it, except that the contents of that Book, including of course its adjuncts with it, are essentially of as much importance, and as fit to be considered a part of the fundamental or organic law governing the association upon which it is imposed, as are any of the Articles of the Constitution of that association. But the end proposed might have been accomplished by applying to such amendments the rule all along provided for amendments of the Constitution.

The end, however, was not accomplished in that way, but on the other hand by relaxing in one respect the strictness of the requirement as to constitutional amendments, and phrasing it in the same way as that for Prayer Book amendments. Why this course was pursued, is a question which the text does not answer, and which is therefore open for consideration.

In regard to this question, it is to be observed that where a practical reason for a change exists, it is not worth while to look for a theoretical reason, unless there is something to show that the practical reason is not sufficient to account for it. And with regard to this change, it may be reasonably said that the ends of convenience and simplicity appear to have been served; and that inasmuch as the vote by orders had been in a previous article defined and described, and was such as to give the best expression of the will of a quorum in ordinary cases, it was thought sufficient, and better, to use it as the mode of ascertaining the will of the whole Church in certain specified extraordinary cases, such as those of amendments to the "General Constitution respecting both the doctrine and the discipline of the Church," or in other words to the Prayer Book and the Constitution; and to avoid the retention, in one particular case, of another kind of vote, which had always, or at least in later times, been imperfectly understood, and concerning which it was to be doubted whether in fact, except in the beginning, it had ever been perfectly carried out. For although, as already observed, all the amendments to the Constitution since the adoption of Article 9 in 1789, have been made in intended com-

pliance with the provisions of that Article, yet in a given case it would be extremely difficult to prove that an alteration had in fact been accomplished in exact compliance with those provisions: first, because it would not be easy, if it were possible, to show that the vote of a Bishop of the Church in a Diocese had coincided with the vote of his Diocese; and secondly because it does not always seem clear from the records of the Journals whether the vote on amendment to the Constitution has been taken, under the provisions of the old Article 2, as a vote by Dioceses and Orders, or under Article 9, as a vote by Dioceses. Under these circumstances then, the kind of vote required by Article 9 being apt to be misunderstood and misapplied, there seemed to be reason for the change to a mode of voting which, even if not so universally understood as would be desirable, was yet capable of being acted on with precision, and no departure from which could take place without its being at once detected and repudiated.

To this practical reason, which is alone sufficient to account for the change, there is to be added another equally practical though somewhat deeper; and that is that in the changed conditions under which we now live, the will of the Church throughout the Dioceses can be much more nearly ascertained by the distributive "vote by orders," than by the action of a simple majority of Dioceses. Situated as the Church was at the time of the adoption of the old rule, when in each State there was an independent organization claiming the right to the regulation of its own ecclesiastical affairs, the appeal naturally was that these should come together into a common union or association; and consent, each of them to be bound by the will of a majority of them all. It was natural too, as has been shown historically to have been the fact, that the agreement should be made that the common Constitution should be amended only by a majority of those States which had acceded to it, and that once established such a rule should have continued longer than the reason for it; though being constitutional it could not well fail from desuetude. But now that this union has so long continued that the whole idea of the right of individual or independent Diocesan action has been outgrown, it has become equally natural that the consent of the Church should be given rather as that of the whole body distributed throughout the Dioceses, than

as that of a majority of the Dioceses as such. For these plainly practical reasons the change thus involved in the substitution of Article XI for Article 9, has apparently been made; and as there appears to be no evidence of any further or other reason, we seem to be justified in accepting these as sufficient to account for it.

But as to inferences which may be drawn from the changes of language involved in that substitution, there appears to be need of some caution. The amendment is said to take place by a resolve of General Convention at one triennial meeting, and by its adoption of the proposal contained in the resolve at its next triennal meeting. To infer from this language, however, that the act of amendment is the act of General Convention otherwise than as the agent of the power which created it, and devolved this capacity of action upon it, by the Constitution, would be extremely rash; first, because such inference would utterly confuse the inherent and essential distinction between the Church in the Dioceses and the General Convention, which is involved in the very idea of the Constitution; and secondly because it would leave out of sight the fact that the right of the Church in a majority of the Dioceses to make such amendment in the Constitution, has not been taken away, but only is not required to be exercised, which is a different matter.

That the Church in the Dioceses is the factor by which amendment is made, and that the General Convention is the sphere in which that factor operates is as true under Article XI. as it was under Article 9. It is not so apparent, because the requirement is that of a majority of Dioceses in each order, instead of a majority of Dioceses. But it is always within the power of the Church in a majority of Dioceses to make or prevent an amendment to the Constitution; because it is always within the power of the Church in a majority of the Dioceses to cast its clerical and lay votes on the same side. The improbability of such a course being pursued, has nothing to do with the constitutional right to pursue it. It seems, therefore, that the relation of the Dioceses to the General Convention and the Constitution has not in principle been affected by the substitution of Article XI.; although, with their consent and approval the process of amendment has been so far modified as not to require the vote of the majority of Dioceses as such; but to per-

mit the concurrent vote of the Clerical and Lay representatives of a majority of the Dioceses entitled to be represented to be accepted as a substitute for it.

Thus with the comment upon the concluding Article of the amended Constitution of 1901, we bring to a close the comparative study which it was the purpose of the present essay to pursue.

In looking back upon the work as accomplished, it appears to have gone somewhat further than a comparison between the present Constitution and its immediate predecessor, and to have tended toward reflections, both historical and critical, which were not at first contemplated. These reflections, however, have seemed to grow naturally out of the subjects necessary to be discussed; and have not, it is hoped, exceeded the proper limits of what was designed as a practical endeavor to promote the better understanding of the Constitution in its present form.

To treat this Instrument merely as a legal document without regard to the Church principles which underlie it, and which it plainly presupposes, would have been to ignore the relation between the Church in this country and the Catholic Church, of which it is a part; to treat it without regard to the facts of its origin, would have been to ignore its vital connection with what was really an epoch in the history of Christianity; and to omit to notice what appeared to be its imperfections would have been to ignore the possibility of its improvement. In this latter aspect of the work, however, it is hoped that no criticism may have given the impression of disparagement. To have afforded just cause for such an impression would be matter of real sorrow, since nothing could be further from the purpose of the present paper than such unseemliness as would be involved in anything like depreciation of the terms of an Instrument so august in its sanctions as that which has been under consideration.

It ought always to be remembered that constitutional government, though more stable than some others, is not a fossil, but a living organism, which never can attain a final form until it has ceased to be, and has become only a part of the history of the

past; and in which, therefore, while it lives, there is required from time to time a readjustment, or adaptation of the principles of the past to the new conditions of the present. And respectful, outspoken comments upon authoritative forms, ought only to be regarded in the light of contributions to that process. If they do not clearly indicate, they may at least prepare the way for, the means needed for the correction of missteps on the path toward perfection.

Nor should it be forgotten that a period of social and intellectual unrest like that in which we live; a period wherein no previously accepted truth is permitted to pass unchallenged; and wherein not only constitutional, but also every species of representative government begins to be eyed with suspicion, and held responsible for the very evils which it has been studiously designed to prevent, is not a time in which we can afford to relax our watchfulness of the process of the development of forms which are essential to the expression and preservation of sound and just principles.

APPENDIX.

Constitution as in 1898, and 1901.

CONSTITUTION,

ADOPTED IN GENERAL CONVENTION,

IN PHILADELPHIA, OCTOBER, 1789.

ARTICLE 1.

There shall be a General Convention of the Protestant Episcopal Church in the United States of America on the first Wednesday in October, in every third year, from the year of our Lord one thousand eight hundred and forty-one; and in such place as shall be determined by the Convention; and in case there shall be an epidemic disease, or any other good cause to render it necessary to alter the place fixed on for any such meeting of the Convention, the Presiding Bishop shall have it in his power to appoint another convenient place (as near as may be to the place so fixed on) for the holding of such Convention; and special meetings may be called at other times, in the manner hereafter to be provided for; and this Church, in a majority of the Dioceses which shall have adopted this Constitution, shall be represented, before they shall proceed to business; except that the representation from two Dioceses shall be sufficient to adjourn; and in all business of the Convention freedom of debate shall be allowed.

ARTICLE 2.

The Church in each Diocese shall be entitled to a representation of both the Clergy and the Laity. Such representation shall consist of not more than four Clergymen and four Laymen, com-

municants in this Church, residents in the Diocese, and chosen in the manner prescribed by the Convention thereof; and in all questions when required by the Clerical or Lay representation from any Diocese, each Order shall have one vote; and the majority of suffrages by Dioceses shall be conclusive in each Order, provided such majority comprehend a majority of the Dioceses represented in that Order. The concurrence of both Orders shall be necessary to constitute a vote of the House of Deputies. If the Convention of any Diocese should neglect or decline to appoint Clerical Deputies, or if they should neglect or decline to appoint Lay Deputies, or if any of those of either Order appointed should neglect to attend, or be prevented by sickness or any other accident, such Diocese shall nevertheless be considered as duly represented by such Deputy or Deputies as may attend, whether Lay or Clerical. And if, through the neglect of the Convention of any of the Churches which shall have adopted or may hereafter adopt this Constitution, no Deputies, either Lay or Clerical, should attend at any General Convention, the Church in such Diocese shall nevertheless be bound by the acts of such Convention.

ARTICLE 3.

The Bishops of this Church, when there shall be three or more, shall, whenever General Conventions are held, form a separate House, with a right to originate and propose acts for the concurrence of the House of Deputies composed of Clergy and Laity; and when any proposed act shall have passed the House of Deputies, the same shall be transmitted to the House of Bishops, who shall have a negative thereon; and all acts of the Convention shall be authenticated by both Houses. And in all cases the House of Bishops shall signify to the House of Deputies their approbation or disapprobation (the latter with their reasons in

writing) within three days after the proposed act shall have been reported to them for concurrence; and in failure thereof, it shall have the operation of a law. But until there shall be three or more Bishops, as aforesaid, any Bishop attending a General Convention shall be a member *ex-officio,* and shall vote with the Clerical Deputies of the Diocese to which he belongs; and a Bishop shall then preside.

ARTICLE 4.

The Bishop or Bishops in every Diocese shall be chosen agreeably to such rules as shall be fixed by the Convention of that Diocese; and every Bishop of this Church shall confine the exercise of his Episcopal Office to his proper Diocese, unless requested to ordain, or confirm, or perform any other act of the Episcopal Office in another Diocese by the Ecclesiastical Authority thereof.

ARTICLE 5.

A Protestant Episcopal Church in any of the United States, or any Territory thereof, not now represented, may, at any time hereafter, be admitted on acceding to this Constitution; and a new Diocese, to be formed from one or more existing Dioceses, may be admitted under the following restrictions, viz.:—

No new Diocese shall be formed or erected within the limits of any other Diocese, nor shall any Diocese be formed by the junction of two or more Dioceses, or parts of Dioceses, unless with the consent of the Bishop and Convention of each of the Dioceses concerned, as well as of the General Convention, and such consent shall not be given by the General Convention until it has satisfactory assurance of a suitable provision for the support of the Episcopate in the contemplated new Diocese.

No such new Diocese shall be formed which shall contain less than six Parishes, or less than six Presbyters who have been for

at least one year canonically resident within the bounds of such new Diocese, regularly settled in a Parish or Congregation, and qualified to vote for a Bishop. Nor shall such new Diocese be formed if thereby any existing Diocese shall be so reduced as to contain less than twelve Parishes, or less than twelve Presbyters who have been residing therein and settled and qualified as above mentioned: *Provided,* that no city shall form more than one Diocese.

In case one Diocese shall be divided into two or more Dioceses, the Diocesan of the Diocese divided may elect the one to which he will be attached, and shall thereupon become the Diocesan thereof; and the Bishop Coadjutor if there be one, may elect the one to which he will be attached; and if it be not the one elected by the Bishop, he shall be the Diocesan thereof.

Whenever the division of a Diocese into two or more Dioceses shall be ratified by the General Convention, each of the Dioceses shall be subject to the Constitution and Canons of the Diocese so divided, except as local circumstances may prevent, until the same may be altered in either Diocese by the Convention thereof. And whenever a Diocese shall be formed out of two or more existing Dioceses, the new Diocese shall be subject to the Constitution and Canons of that one of the said existing Dioceses to which the greater number of Clergymen shall have belonged prior to the erection of such new Diocese, until the same may be altered by the Convention of the new Diocese.

ARTICLE 6.

The mode of trying Bishops shall be provided by the General Convention. The Court appointed for that purpose shall be composed of Bishops only. In every Diocese, the mode of trying Presbyters and Deacons may be instituted by the Convention of the Diocese. None but a Bishop shall pronounce sentence of ad-

monition, suspension, or degradation from the Ministry, on any Clergyman, whether Bishop, Presbyter, or Deacon.

ARTICLE 7.

No person shall be admitted to Holy Orders until he shall have been examined by the Bishop, and by two Presbyters, and shall have exhibited such testimonials and other requisites as the Canons, in that case provided, may direct. Nor shall any person be ordained until he shall have subscribed the following declaration:—

"I do believe the Holy Scriptures of the Old and New Testament to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrines and Worship of the Protestant Episcopal Church in the United States."

No person ordained by a foreign Bishop shall be permitted to officiate as a Minister of this Church, until he shall have complied with the Canon or Canons in that case provided, and have also subscribed the aforesaid Declaration.

ARTICLE 8.

A Book of Common Prayer, Administration of the Sacraments, and other Rites and Ceremonies of the Church, Articles of Religion, and a Form and Manner of making, ordaining, and consecrating Bishops, Priests, and Deacons, when established by this or a future General Convention, shall be used in the Protestant Episcopal Church in those Dioceses which shall have adopted this Constitution. No alteration or addition shall be made in the Book of Common Prayer, or other Offices of the Church, or the Articles of Religion, unless the same shall be proposed in one General Convention, and by a resolve thereof made known to the Convention of every Diocese, and adopted at the subsequent Gen-

eral Convention. *Provided, however*, That the General Convention shall have power, from time to time, to amend the Lectionary; but no act for this purpose shall be valid which is not voted for by a majority of the whole number of Bishops entitled to seats in the House of Bishops, and by a majority of all the Dioceses entitled to representation in the House of Deputies.

ARTICLE 9.

This Constitution shall be unalterable, unless in General Convention, by the Church, in a majority of the Dioceses which may have adopted the same; and all alterations shall be first proposed in one General Convention, and made known to the several Diocesan Conventions, before they shall be finally agreed to, or ratified, in the ensuing General Convention.

ARTICLE 10.

Bishops for foreign countries, on due application therefrom, may be consecrated, with the approbation of the Bishops of this Church, or a majority of them, signified to the Presiding Bishop; he thereupon taking order for the same, and they being satisfied that the person designated for the office has been duly chosen, and properly qualified; the Order of Consecration to be conformed, as nearly as may be, in the judgment of the Bishops, to the one used in this Church. Such Bishops, so consecrated, shall not be eligible to the Office of Diocesan, or Bishop Coadjutor, in any Diocese in the United States, nor be entitled to a seat in the House of Bishops, nor exercise any Episcopal authority in said States.

Done in the General Convention of the Bishops, Clergy, and Laity of the Church, the 2d day of October, 1789.

CONSTITUTION,

ADOPTED IN GENERAL CONVENTION,

IN PHILADELPHIA, OCTOBER, 1789,

AS AMENDED IN SUBSEQUENT GENERAL CONVENTIONS.

ARTICLE I.

SECTION 1. There shall be a General Convention of this Church, consisting of the House of Bishops and the House of Deputies, which Houses shall sit and deliberate separately; and in all deliberations freedom of debate shall be allowed. Either House may originate and propose legislation, and all acts of the Convention shall be adopted and be authenticated by both Houses.

SEC. 2. Every Bishop of this Church having jurisdiction, every Bishop Coadjutor, and every Bishop who by reason of advanced age and bodily infirmity arising therefrom has resigned his jurisdiction, shall have a seat and a vote in the House of Bishops. A majority of all Bishops entitled to vote, exclusive of Foreign Missionary Bishops and of Bishops who have resigned their jurisdiction, shall be necessary to constitute a quorum for the transaction of business.

SEC. 3. The Senior Bishop of this Church in the order of consecration, having jurisdiction within the United States, shall be the Presiding Bishop of the Church. He shall discharge such duties as may be prescribed by the Constitution and the Canons of the General Convention. But if the Presiding Bishop shall resign his office as such, or if he shall resign his episcopal jurisdiction, or if by reason of infirmity he shall become disabled, the Bishop next in seniority by consecration, having jurisdiction

within the United States, shall thereupon become the Presiding Bishop.

Sec. 4. The Church in each Diocese which has been admitted to union with the General Convention shall be entitled to representation in the House of Deputies by not more than four Presbyters, canonically resident in the Diocese, and not more than four Laymen, communicants of this Church, having domicile in the Diocese; but the General Convention by Canon may reduce the representation to not fewer than two Deputies in each order. Each Diocese shall prescribe the manner in which its Deputies shall be chosen.

To constitute a quorum for the transaction of business, the Clerical order shall be represented by at least one Deputy in each of a majority of the Dioceses entitled to representation, and the Lay order shall likewise be represented by at least one Deputy in each of a majority of the Dioceses entitled to representation.

On any question, the vote of a majority of the Deputies present shall suffice, unless otherwise ordered by this Constitution or, in cases not specially provided for by the Constitution, by Canons requiring more than a majority, or unless the Clerical or the Lay representation from any Diocese require that the vote be taken by orders. In all cases of a vote by orders, the two orders shall vote separately, each Diocese having one vote in the Clerical order and one in the Lay order; and the concurrence of the votes of the two orders, by not less than a majority in each order of all the Dioceses represented in that order at the time of the vote, shall be necessary to constitute a vote of the House.

Sec. 5. In either House any number less than a quorum may adjourn from day to day. Neither House, without the consent of the other, shall adjourn for more than three days, or to any place other than that in which the Convention shall be sitting.

Sec. 6. The General Convention shall meet in every third

year on the first Wednesday in October, unless a different day be appointed by the preceding Convention, and at the place designated by such Convention; but if there shall appear to the Presiding Bishop of the Church sufficient cause for changing the place so appointed, he may appoint another place for such meeting. Special meetings may be provided for by Canon.

ARTICLE II.

SECTION 1. In every Diocese the Bishop or the Bishop Coadjutor shall be chosen agreeably to rules prescribed by the Convention of that Diocese. Missionary Bishops shall be chosen in accordance with the Canons of the General Convention.

SEC. 2. No one shall be ordained and consecrated Bishop until he shall be thirty years of age; nor without the consent of a majority of the Standing Committees of all the Dioceses, and the consent of a majority of the Bishops of this Church exercising jurisdiction within the United States. But if the election shall have taken place within three months next before the meeting of the General Convention, the consent of the House of Deputies shall be required in place of that of a majority of the Standing Committees. No one shall be ordained and consecrated Bishop by fewer than three Bishops.

SEC. 3. A Bishop shall confine the exercise of his office to his own Diocese or Missionary District, unless he shall have been requested to perform episcopal acts in another Diocese or Missionary District by the Ecclesiastical Authority thereof, or in a vacant Missionary District by the Presiding Bishop of this Church, or unless he shall have been authorized and appointed by the House of Bishops, or by the Presiding Bishop by its direction, to act temporarily in case of need within any territory not yet organized into Dioceses or Missionary Districts of this Church.

SEC. 4. A Bishop may not resign his jurisdiction without the consent of the House of Bishops.

ARTICLE III.

Bishops may be consecrated for foreign lands upon due application therefrom, with the approbation of a majority of the Bishops of this Church entitled to vote in the House of Bishops, certified to the Presiding Bishop; under such conditions as may be prescribed by Canons of the General Convention. Bishops so consecrated shall not be eligible to the office of Diocesan or of Bishop Coadjutor of any Diocese in the United States or be entitled to vote in the House of Bishops, nor shall they perform any act of the episcopal office in any Diocese or Missionary District of this Church, unless requested so to do by the Ecclesiastical Authority thereof.

ARTICLE IV.

In every Diocese a Standing Committee shall be appointed by the Convention thereof. When there is a Bishop in charge of the Diocese, the Standing Committee shall be his Council of Advice; and when there is no such Bishop, the Standing Committee shall be the Ecclesiastical Authority of the Diocese for all purposes declared by the General Convention. The rights and the duties of the Standing Committee, except as provided in the Constitution and Canons of the General Convention, may be prescribed by the Canons of the respective Dioceses.

ARTICLE V.

A Protestant Episcopal Church in any of the United States, or any Territory thereof, not now represented, may, at any time hereafter, be admitted on acceding to this Constitution; and a

new Diocese, to be formed from one or more existing Dioceses, may be admitted under the following restrictions, viz.:—

No new Diocese shall be formed or erected within the limits of any other Diocese, nor shall any Diocese be formed by the junction of two or more Dioceses, or parts of Dioceses, unless with the consent of the Bishop and Convention of each of the Dioceses concerned, as well as of the General Convention, and such consent shall not be given by the General Convention until it has satisfactory assurance of a suitable provision for the support of the Episcopate in the contemplated new Diocese.

No such new Diocese shall be formed which shall contain less than six Parishes, or less than six Presbyters who have been for at least one year canonically resident within the bounds of such new Diocese, regularly settled in a Parish or Congregation, and qualified to vote for a Bishop. Nor shall such new Diocese be formed if thereby any existing Diocese shall be so reduced as to contain less than twelve Parishes, or less than twelve Presbyters who have been residing therein and settled and qualified as above mentioned: *Provided,* that no city shall form more than one Diocese.

In case one Diocese shall be divided into two or more Dioceses the Diocesan of the Diocese divided may elect the one to which he will be attached, and shall thereupon become the Diocesan thereof; and the Bishop Coadjutor if there be one, may elect the one to which he will be attached; and if it be not the one elected by the Bishop, he shall be the Diocesan thereof.

Whenever the division of a Diocese into two or more Dioceses shall be ratified by the General Convention, each of the Dioceses shall be subject to the Constitution and Canons of the Diocese so divided, except as local circumstances may prevent, until the same may be altered in either Diocese by the Convention thereof. And whenever a Diocese shall be formed out of two or more existing Dioceses, the new Diocese shall be subject to the Constitu-

tion and Canons of that one of the said existing Dioceses to which the greater number of Clergymen shall have belonged prior to the erection of such new Diocese, until the same may be altered by the Convention of the new Diocese.

ARTICLE VI.

SECTION 1. The House of Bishops may establish Missionary Districts in States and Territories or parts thereof not organized into Dioceses. It may also from time to time change, increase, or diminish the territory included in such Missionary Districts in such manner as may be prescribed by Canon.

SEC. 2. The General Convention may accept a cession of the territorial jurisdiction of a part of a Diocese when such cession shall have been proposed by the Bishop and the Convention of such Diocese, and consent thereto shall have been given by three-fourths of the parishes in the ceded territory, and also by the same ratio of the parishes within the remaining territory.

Any territorial jurisdiction or any part of the same, which may have been accepted from a Diocese by the General Convention under the foregoing provision, may be retroceded to the said Diocese by such joint action of all the several parties as is herein required for its cession: *Provided*, that such action of the General Convention, whether of cession or retrocession, shall be by a vote of two-thirds of all the Bishops present and voting and by a vote of two-thirds of the House of Deputies voting by orders.

SEC. 3. Missionary Districts shall be organized as may be prescribed by Canon of the General Convention.

ARTICLE VII.

Dioceses and Missionary Districts may be united into Provinces in such manner, under such conditions, and with such pow-

ers, as shall be provided by Canon of the General Convention; *provided, however,* that no Diocese shall be included in a Province without its own consent.

ARTICLE VIII.

No person shall be ordered Priest or Deacon until he shall have been examined by the Bishop and two Priests and shall have exhibited such testimonials and other requisites as the Canons in that case provided may direct. No person shall be ordained and consecrated Bishop, or ordered Priest or Deacon, unless at the time, in the presence of the ordaining Bishop or Bishops, he shall subscribe and make the following declaration:

"I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Protestant Episcopal Church in the United States of America."

No person ordained by a foreign Bishop, or by a Bishop not in communion with this Church, shall be permitted to officiate as a Minister of this Church until he shall have complied with the Canon or Canons in that case provided and also shall have subscribed the aforesaid declaration.

ARTICLE IX.

The General Convention may, by Canon, establish a Court for the trial of Bishops, which shall be composed of Bishops only.

Presbyters and Deacons shall be tried by a Court instituted by the Convention of the Diocese, or by the Ecclesiastical Authority of the Missionary District, in which they are canonically resident.

The General Convention, in like manner, may establish or may provide for the establishment of Courts of Review of the determinations of Diocesan or other trial Courts.

The Court for the review of the determination of the trial Court, on the trial of a Bishop, shall be composed of Bishops only.

The General Convention, in like manner, may establish an ultimate Court of Appeal, solely for the review of the determination of any Court of Review on questions of doctrine, faith, or worship.

None but a Bishop shall pronounce sentence of admonition, or of suspension, deposition, or degradation from the ministry, on any Bishop, Presbyter, or Deacon.

A sentence of suspension shall specify on what terms or conditions and at what time the suspension shall cease.

ARTICLE X.

The Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church, together with the Psalter or Psalms of David, the Form and Manner of Making, Ordaining, and Consecrating Bishops, Priests, and Deacons, the Form of Consecration of a Church or Chapel, the Office of Institution of Ministers, and Articles of Religion, as now established or hereafter amended by the authority of this Church, shall be in use in all the Dioceses and Missionary Districts of this Church. No alteration thereof or addition thereto shall be made unless the same shall be first proposed in one triennial meeting of the General Convention, and by a resolve thereof be sent within six months to the Secretary of the Convention of every Diocese, to be made known to the Diocesan Convention at its next meeting, and be adopted by the General Convention at its next succeeding triennial meeting by a majority of the whole number of Bishops entitled to vote in the House of Bishops, and by a majority of the Clerical and Lay Deputies of all the Dioceses entitled to representation in the House of Deputies voting by orders. *Provided, however,* that the General Convention at any meeting shall have

power to amend the Tables of Lessons by a majority of the whole number of Bishops entitled to vote in the House of Bishops, and by a majority of the Clerical and Lay Deputies of all the Dioceses entitled to representation in the House of Deputies voting by orders.

ARTICLE XI.

No alteration or amendment of this Constitution shall be made unless the same shall be first proposed at one triennial meeting of the General Convention, and by a resolve thereof be sent to the Secretary of the Convention of every Diocese, to be made known to the Diocesan Convention at its next meeting, and be adopted by the General Convention at its next succeeding triennial meeting by a majority of the whole number of Bishops entitled to vote in the House of Bishops, and by a majority of the Clerical and Lay Deputies of all the Dioceses entitled to representation in the House of Deputies voting by orders.

Allen, Ethan, D.D.

Clergy in Maryland of the P.E.
Church since the Independence of
1783,

by the Rev. Ethan Allen, D.D.
of the Diocese of Maryland.
Baltimore: 1860.

Md. Jo. of 1883.
Va. 1885.

Rhode Island

Journal of Proceedings of the
One Hundredth Annual Session of
the Rhode Island Episcopal Convention
held in St John's Church, Provi-
dence, Tuesday 10th and Wednesday 11th
June, 1890. Providence, 1890.

[Centennial Discourse by Rt. Rev.
Thos. March Clark, D.D., LL.D.]

Vermont.

Journal of the Centennial being the
One Hundredth Annual Convention of